

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. G-9, SUB 722  
DOCKET NO. G-9, SUB 781  
DOCKET NO. G-9, SUB 786

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. G-9, SUB 722 )  
)  
In the Matter of )  
Consolidated Natural Gas Construction and )  
Redelivery Services Agreement Between )  
Piedmont Natural Gas Company, Inc., and )  
Duke Energy Carolinas, LLC )

DOCKET NO. G-9, SUB 781 )  
)  
In the Matter of )  
Application of Piedmont Natural Gas )  
Company, Inc., for an Adjustment of Rates, )  
Charges, and Tariffs Applicable to Service )  
in North Carolina )

ORDER APPROVING  
STIPULATION, GRANTING  
RATE INCREASE, AND  
REQUIRING CUSTOMER  
NOTICE

DOCKET NO. G-9, SUB 786 )  
)  
In the Matter of )  
Application of Piedmont Natural Gas )  
Company, Inc., for Modification to Existing )  
Energy Efficiency Program and Approval )  
of New Energy Efficiency Programs )

HEARD: Wednesday, July 14, 2021, at 1:30 p.m. and 6:30 p.m., via WebEx  
Videoconference  
Thursday, September 9, 2021, at 9:00 a.m., via WebEx Videoconference

BEFORE: Chair Charlotte A. Mitchell, Presiding; and Commissioners ToNola D.  
Brown-Bland, Lyons Gray, Daniel G. Clodfelter, Kimberly W. Duffley, Jeffrey  
A. Hughes, and Floyd B. McKissick, Jr.

APPEARANCES:

For Piedmont Natural Gas Company, Inc.:

James H. Jeffries, IV, McGuireWoods LLP, 201 N. Tryon Street, Suite 3000, Charlotte, North Carolina 28202, and Brian S. Heslin and Amanda Johnson Demopoulos, Duke Energy Corporation, 550 South Tryon Street, Charlotte, North Carolina 28202

For Carolina Industrial Group for Fair Utility Rates IV:

Christina D. Cress and Patrick T. Buffkin, Bailey & Dixon, LLP, 434 Fayetteville Street, Suite 2500, Raleigh, North Carolina 27601

For Carolina Utility Customers Association, Inc.:

Marcus Trathen and Craig D. Schauer, Brooks Pierce, 150 Fayetteville Street, Suite 1700, Raleigh, North Carolina 27601

For Duke Energy Carolinas, LLC:

Robert W. Kaylor, Law Office of Robert W. Kaylor, 353 East Six Forks Road, Suite 260, Raleigh, North Carolina 27609

For Fayetteville Public Works Commission:

James West and Dustin Doty, 955 Old Wilmington Road, Fayetteville, North Carolina 28301

For the Using and Consuming Public:

Elizabeth D. Culpepper, Megan Jost, and Lucy E. Edmondson, Public Staff – North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4300

Margaret A. Force and Teresa L. Townsend, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On February 19, 2021, in Docket No. G-9, Sub 781, Piedmont gave notice pursuant to Commission Rule R1-17(a) of its intent to file a general rate case.

On March 2, 2021, Fayetteville Public Works Commission (FPWC) filed a Petition to Intervene in Docket No. G-9, Sub 781, which was granted by Commission order dated March 4, 2021.

On March 16, 2021, the Commission issued an order consolidating Piedmont's general rate case in Docket No. G-9, Sub 781, with its request for approval of a Consolidated Natural Gas and Redelivery Services Agreement between Piedmont and Duke Energy Carolinas, LLC, in Docket No. G-9, Sub 722 (March Consolidation Order). The March Consolidation Order also directed Piedmont to file direct testimony in support of the Second Revised Agreement by April 19, 2021. Finally, the March Consolidation Order allowed the participation of DEC in this proceeding.

On March 19, 2021, Piedmont filed a Request for Modifications to Existing Energy Efficiency Program and for Approval of New Energy Efficiency Programs in Docket No. G-9, Sub 786 (Energy Efficiency Application). In its Energy Efficiency Application, Piedmont requested that the Commission: (1) modify its existing Equipment Rebate Program, an energy efficiency (EE) program authorized by the Commission's March 23, 2009 Order Approving Conservation Programs in Docket No. G-9, Sub 550A; and (2) approve the following three new EE programs: (a) Residential New Construction Program; (b) Commercial Food Services Program; and (c) Commercial HVAC & Water Heating Rebate Program.

On March 22, 2021, Piedmont filed a petition (Petition) seeking: (1) a general increase in and revisions to the rates and charges for customers served by Piedmont; (2) continuation of Piedmont's Integrity Management Rider (IMR) contained in Appendix E to its approved service regulations; (3) continued regulatory asset treatment for certain incremental Transmission Integrity Management Program (TIMP) and Distribution Integrity Management Program (DIMP) Operations and Maintenance (O&M) expenses, and certain incremental environmental cleanup and remediation O&M expenses; (4) continued utilization of the depreciation rates for Piedmont's North Carolina and joint property assets approved in Piedmont's most recent general rate case in 2019; (5) revised and updated amortizations and recovery of certain regulatory assets accrued since Piedmont's last general rate case proceeding; (6) utilization of the lead-lag study filed by Piedmont in its most recent general rate case filing in 2019; (7) adoption of a Rider mechanism to allow Piedmont to recover the costs of its approved EE programs from customers or, in the alternative, authorization to defer costs associated with Piedmont's approved EE programs pending amortization at the Commission's discretion at some later date; and (8) other updates and revisions to Piedmont's rate schedules and service regulations. With its Petition, Piedmont also filed: (1) the direct testimony and exhibits of witnesses Sasha Weintraub, Senior Vice President; Karl W. Newlin, Senior Vice President, Corporate Development and Treasurer; Brian R. Weisker, Senior Vice President and Chief Operations Officer, Natural Gas; Pia K. Powers, Managing Director – Rates & Regulatory; Quynh P. Bowman, Director – Gas Rates & Regulatory Strategy; Kally A. Couzens, Manager of Rates & Regulatory Strategy; Dylan W. D'Ascendis, Director at ScottMadden, Inc.; Cynthia A. Menhorn, Vice President for MCR Performance Solutions; and (2) the NCUC Form G-1 information required by Commission Rule R1-17(b)(12) (Form G-1).

On April 5, 2021, the Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene in consolidated Docket No. G-9, Subs 722 and 781, which was granted by Commission order dated April 6, 2021.

On April 8, 2021, the Carolina Industrial Group for Fair Utility Rates IV (CIGFUR IV) filed a Petition to Intervene in consolidated Docket No. G-9, Subs 722 and 781, which was granted by Commission order dated April 9, 2021.

On April 9, 2021, Nucor Steel-Hertford (Nucor) filed a Petition to Intervene in consolidated Docket No. G-9, Subs 722 and 781, which was granted by Commission order dated April 13, 2021.

On April 13, 2021, in Docket No. G-9, Subs 722 and 781, the Commission issued its Order Establishing General Rate Case and Suspending Rates declaring Piedmont's application to be a general rate case pursuant to N.C. Gen. Stat. § 62-133 and Commission Rule R1-17, and suspending the proposed rates for a period of up to 270 days from and after April 13, 2021.

Also on April 13, 2021, in Docket No. G-9, Sub 786 and consolidated Docket No. G-9, Subs 722 and 781, the Public Staff filed a Motion to Consolidate Dockets requesting that the Commission consolidate Piedmont's Energy Efficiency Application in Docket No. G-9, Sub 786 with Piedmont's general rate case application in Docket No. G-9, Sub 781.

On April 19, 2021, the Commission issued its order consolidating Piedmont's general rate case in Docket No. G-9, Sub 781 with Piedmont's Energy Efficiency Application in Docket No. G-9, Sub 786.

Also on April 19, 2021, in Docket No. G-9, Sub 722 and consistent with prior Commission Order, Piedmont filed the direct testimony and exhibits of witnesses Bruce P. Barkley, Vice President – Rates and Natural Gas Supply of Piedmont and Matthew DeCoursey, Managing Director in the Power & Utilities practice at FTI Consulting, Inc. (FTI).

On May 17, 2021, the Commission issued its Order Scheduling Investigation and Hearings, Establishing Intervention and Testimony Due Dates and Discovery Guidelines, and Requiring Public Notice (May 17 Order).

On June 8, 2021, the Commission issued its Order Scheduling Expert Witness Hearing to be Held in Person in Raleigh, North Carolina, beginning on September 7, 2021.

On June 22, July 14, and July 16, 2021, Piedmont filed affidavits attesting to the required publication of notice of this matter.

In accordance with the May 17 Order, the Commission held two public hearings, both remotely, on July 14, 2021, for the purpose of hearing from Piedmont's customers. The following public witnesses appeared and testified:

First Session: Robin Marrs, Lawrence Drew, Ronald Stephenson, Kimberly Nofsinger, Nadia Minniti, Steve Hahn, and Marth Boger

Second Session: Kris Klenke and Anne Schrader

On July 28, 2021, pursuant to its reservation of its right to do so in its Petition as permitted by N.C.G.S. § 62-133(c), Piedmont filed updated versions of its schedules reflecting updates to its rates, revenues, rate base, cost of capital, and expenses as of June 30, 2021, as well as for the effect of the projected in-service amount for two large capital projects – the Robeson LNG plant and associated facilities (inclusive of Lines 456 and 457 which connect the plant to Piedmont’s transmission system) (Robeson LNG Plant) and Pender-Onslow Expansion project – nearing completion at that time (June Updates). Piedmont also filed supporting supplemental testimony and exhibits of Piedmont witnesses Bowman and Couzens.

On August 2, 2021, the North Carolina Attorney General’s Office (AGO) filed a Notice of Intervention on behalf of the using and consuming public.

On August 3, 2021, the Public Staff filed a motion for extension of the deadline for filing intervenor and Public Staff direct testimony and exhibits to August 11, 2021, and for the filing of Piedmont rebuttal testimony and exhibits to August 25, 2021. The Commission granted the motion by order dated August 4, 2021.

On August 11, 2021, the Public Staff filed the direct testimony and exhibits of Mary A. Coleman, Staff Accountant, Accounting Division; Lynn L. Feasel, Staff Accountant, Accounting Division; Jack L. Floyd, Manager, Electric Section – Electric Revenues, Rates, and Services, Energy Division; John R. Hinton, Director, Economic Research Division; Dustin R. Metz, Utilities Engineer, Electric Section, Energy Division; Neha R. Patel, Manager, Natural Gas Section, Energy Division; Julie G. Perry, Manager, Natural Gas & Transportation Section, Accounting Division; James M. Singer, Utilities Engineer, Natural Gas Section, Energy Division; and David M. Williamson, Utilities Engineer, Electric Section, Energy Division.

Also on August 11, 2021, CUCA filed the testimony and exhibits of its witness Kevin W. O’Donnell; CIGFUR IV filed the testimony and exhibits of its witness Nicholas Phillips, Jr.; and DEC filed the testimony of its witness H. Lee Mitchell, IV.

On August 12, 2021, the Commission issued its Order Providing Hearing Procedures.

On August 16, 2021, the Public Staff filed corrections to the testimony of its witness Hinton, and CIGFUR IV filed revised testimony of its witness Phillips.

On August 20, 2021, CIGFUR IV filed a motion for special accommodations for its witness Phillips, which was denied by Commission order dated August 30, 2021.

On August 23, 2021, Piedmont filed a motion to substitute Kenneth A. Sosnick, Managing Director in the Power & Utilities practice at FTI, as the sponsor of the direct testimony of witness DeCoursey in Docket No. G-9, Sub 722. This motion was granted by Commission order dated August 31, 2021.

On August 24, 2021, the Public Staff filed the supplemental testimony of its witness Metz.

On August 25, 2021, Piedmont filed rebuttal testimony of its witnesses Barkley, Bowman, Couzens, and Menhorn, and rebuttal testimony and exhibits of its witnesses D'Ascendis and Newlin. Piedmont also filed rebuttal testimony of Adam Long, Vice President – Gas Pipeline Operations of Piedmont.

On August 26, 2021, Public Staff filed amended exhibits of its witness Perry.

On August 30, 2021, the Commission issued its Order Establishing Remote Procedures for Expert Witness Hearing. All Parties to this proceeding filed statements consenting to the remote expert witness hearing.

On September 2, 2021, Piedmont filed notice with the Commission that it had reached a settlement in principle with the Public Staff resolving the majority of issues in Piedmont's rate case in Docket No. G-9, Sub 781 and, as such, requested that the Commission suspend the beginning of the evidentiary hearing until Thursday, September 9, 2021. The Commission approved Piedmont's request and rescheduled the evidentiary hearing to begin on Thursday, September 9, 2021, at 9:00 a.m. by order dated September 3, 2021.

On September 7, 2021, DEC filed a motion to excuse its witness Mitchell from testifying at the September 9, 2021 evidentiary hearing, which was denied by Commission order dated September 8, 2021.

Also, on September 7, 2021, Piedmont, the Public Staff, CUCA, and CIGFUR IV (collectively, the Stipulating Parties) filed a Stipulation of Partial Settlement (Stipulation) and exhibits. Piedmont also filed the settlement testimony and exhibits of witnesses D'Ascendis and Powers; settlement testimony of witness Couzens; and supplemental testimony of witness Long. Public Staff filed the settlement testimony and exhibit of its witness Hinton and the supplemental and settlement testimony and exhibit of its witness Perry. Piedmont also filed its Late-Filed Exhibit No. 1 to the direct testimony of Piedmont witness Weisker.

In the Stipulation, the Stipulating Parties included two sets of revenue related schedules (Exhibits A, C, E, J, K, and L). One set, designated as Exhibits A1, C1, E1, J1, K1, and L1, showed the stipulated revenue requirement without including capital related to the Robeson LNG Plant (or lines 456 and 457) or the Pender-Onslow Expansion project. The other set, designated as Exhibits A2, C2, E2, J2, K2, and L2, showed the stipulated estimated revenue requirement inclusive of the estimated additional capital as

of August 31, 2021, for the Robeson LNG Plant (inclusive of Lines 456 and 457) and the Pender-Onslow Expansion project.

On September 9, 2021, the matter came on for the expert witness hearing. Piedmont presented the testimony of witnesses Weintraub, Weisker, Newlin, Barkley, Long, Powers, Bowman, Couzens, D'Ascendis, Menhorn, and Sosnick. CUCA presented the testimony of witness O'Donnell. CIGFUR IV presented the testimony of witness Phillips. DEC presented the testimony of witness Mitchell. The Public Staff presented the testimony of witnesses Coleman, Feasel, Floyd, Hinton, Patel, Perry, Metz, Singer, and Williamson. The prefiled testimony of each of these witnesses was copied into the record as if given orally from the stand and their exhibits were entered into evidence.

On September 17, 2021, the Public Staff filed its Late-Filed Exhibit No. 1 as requested of Public Staff witness Perry by the Commission.

On September 20, 2021, consistent with the Stipulation, Piedmont filed a statement of the actual amounts closed to plant as of August 31, 2021, for the Robeson LNG Plant (inclusive of lines 456 and 457) and the Pender-Onslow Expansion project.

On September 22, 2021, Piedmont filed Late-Filed Exhibit Nos. 2-3 and 5, and Confidential Late-Filed Exhibit No. 4 as requested by the Commission.

On September 27, 2021, Piedmont and the Public Staff filed the details of a mechanism governing Piedmont's EE programs under the Stipulation.

On September 28, 2021, the Public Staff filed its Confidential Late Filed Exhibit No. 2 as requested of Public Staff witness Perry by the Commission.

On October 8, 2021, Piedmont and the Public Staff filed an agreed form of rider tariff under the Stipulation and initial proposed rates for Piedmont's proposed EE rider.

On October 11, 2021, Piedmont filed the affidavit of Adam Long attesting to the completeness, operability, and operations of the Robeson LNG Plant (inclusive of lines 456 and 457).

On October 12, 2021, Piedmont filed its Motion for Expedited Approval of Notice and Undertaking Required by N.C.G.S. § 62-135(c) to Implement Temporary Rates, Subject to Refund (Interim Rate Motion) in which it requested Commission approval to implement temporary rates under bond in this case.

On October 14, 2021, the Commission issued its Order Approving Public Notice of Interim Rates Subject to Refund and Financial Undertaking, wherein it approved the relief requested in Piedmont's Interim Rate Motion.

On October 18, 2021, Piedmont filed the supplemental settlement testimony of Piedmont witness Powers and the second supplemental testimony of witness Long, and

Public Staff filed the supplemental settlement testimony of witness Perry, each attesting to the propriety of including in rate base in this proceeding, the capital investment closed to plant as of August 31, 2021, for the Robeson LNG Plant (inclusive of lines 456 and 457) and the Pender-Onslow Expansion project. Witness Powers' supplemental settlement testimony included revised versions of the revenue related Stipulation Exhibits A, C, E, J, K, and L (denoted as Stipulation Exhibits A3, C3, E3, J3, K3, and L3), incorporating the various accounting changes implicated by the agreed inclusion of the August 31, 2021, plant balances for the Robeson LNG Plant (inclusive of Lines 456 and 457) and the Pender-Onslow Expansion project.

On October 25, 2021, the parties filed briefs and/or proposed orders.

Based upon the verified Petition, the testimony and exhibits received into evidence at the hearings, the Stipulation, and the record as a whole, the Commission makes the following

## **FINDINGS OF FACT**

### **Jurisdiction**

1. Piedmont is a wholly-owned subsidiary of Duke Energy, duly authorized to do business in and engaged in the business of transporting, distributing, and selling natural gas within the states of North Carolina, South Carolina, and Tennessee. Piedmont's principal place of business is located in Charlotte, North Carolina.
2. Piedmont is a public utility within the meaning of N.C.G.S. § 62-3(23).
3. The Commission has jurisdiction over, among other things, the rates and charges, service rendered, rate schedules, classifications, and practices of Piedmont in its capacity as a North Carolina public utility.
4. Piedmont is lawfully before the Commission pursuant to N.C.G.S. §§ 62-133, 62-140(c), 62-153 and Commission Rules R1-17 and R6-95 for a determination on its Petition in this proceeding.

### **Piedmont's Petition**

5. Piedmont's Petition seeks approval of a general increase in and revisions to the rates and charges for customers served by Piedmont; continuation of Piedmont's IMR mechanism; continuation of regulatory asset treatment for certain incremental TIMP and DIMP O&M expenses, and certain incremental environmental cleanup and remediation O&M expenses; continuation of the depreciation rates for Piedmont's North Carolina and joint property assets approved in Piedmont's most recent general rate case in 2019; revised and updated amortizations and recovery of certain regulatory assets accrued since Piedmont's last general rate case proceeding; utilization of the lead-lag study filed by Piedmont in its most recent general rate case filing; adoption of a Rider



mechanism to allow Piedmont to recover the costs of its approved EE programs from customers or, in the alternative, authorization to defer costs associated with Piedmont's approved EE programs pending amortization at the Commission's discretion at some later date; and other updates and revisions to Piedmont's rate schedules and service regulations.

6. The Petition included information and data required by NCUC Form G-1 and was supported by the direct prefiled testimonies and exhibits of Piedmont witnesses.

### **Test Period**

7. The only parties submitting evidence in this case with respect to revenue, expenses, and rate base levels used a test period of the twelve months ended December 31, 2020, adjusted for certain known and measurable changes through June 30, 2021. The Stipulation is based upon the same test period.

8. The appropriate test period for use in this proceeding is the twelve-month period ended December 31, 2020, updated for certain known and measurable changes through June 30, 2021, and further updated for the actual plant in service amounts for Piedmont's Robeson LNG Plant and Pender-Onslow Expansion project as of August 31, 2021.

### **Stipulation**

9. Piedmont, the Public Staff, CUCA, and CIGFUR IV executed the Stipulation.

10. The Stipulation settles the majority of matters in Docket Nos. G-9, Sub 781 and G-9, Sub 786 at issue between the Stipulating Parties. The only unresolved issues identified in the Stipulation are (1) the issues raised by the pleadings and testimony in Docket No. G-9, Sub 722, and (2) the proposed allocation of costs to be recovered through the EE rider in Docket No. G-9, Sub 786. The latter issue, as between the Stipulating Parties, however, was resolved through the respective filings of Piedmont and the Public Staff on September 27 and October 8, 2021, to which no party has objected.

11. The revenue impact of the Stipulation is reflected in the provisions of the Stipulation and in Schedule A3 thereto.

12. The Stipulation is the product of give-and-take settlement negotiations between the Stipulating Parties, is material evidence as to the appropriate outcome of this proceeding, and is entitled to be given appropriate weight in this proceeding along with the other evidence provided by Piedmont, the Public Staff, other intervening parties, and the public.

13. No non-Stipulating Party presented evidence opposing the Stipulation.

## Revenue Increase

14. The Petition seeks an increase in annual margin revenues for Piedmont of \$109,025,725.

15. Pursuant to Piedmont's June Updates, this margin revenue request decreased to \$96,872,105.

16. The Stipulation, as filed, initially provided for an increase in annual margin revenues of \$34,133,660; however, the Stipulation also anticipated the subsequent inclusion of additional capital in rate base from the Robeson LNG Plant (inclusive of lines 456 and 457) and the Pender-Onslow Expansion project which were not, at the time of the filing of the Stipulation, eligible for inclusion in rate base. After inclusion of these projects in rate base, as is reflected on Stipulation Exhibit A3 attached to the October 18, 2021, supplemental settlement testimony of Piedmont witness Powers and supplemental settlement testimony of Public Staff witness Perry, the annual stipulated margin increase is \$67,314,874.

17. The effective rate increases applicable to Piedmont's customers resulting from the Stipulation Exhibit J3 amount to \$74,245,421.<sup>1</sup>

18. Through the rates and charges approved in this case, Piedmont should be authorized to increase its annual level of operating revenues by \$74,246,161 per year, as shown on Exhibit A3 of the Stipulation. As shown on Exhibit A3 of the Stipulation, the margin revenue increase is \$67,314,874 and the cost of gas revenue increase is \$6,931,287.

19. The stipulated annual revenue increases shown above are just, reasonable, and appropriate for use in this proceeding.

## Rate Base

20. Piedmont's rate base as of June 30, 2021, adjusted to include the Robeson LNG Plant (inclusive of lines 456 and 457) and the Pender-Onslow Expansion project, is \$4,731,144,325. As described and set forth in Exhibit A3 to the Stipulation filed with the supplemental settlement testimony of Piedmont witness Powers and the supplemental settlement testimony of Public Staff witness Perry on October 18, 2021, this sum includes the original cost of Piedmont's property used and useful in providing natural gas utility service to Piedmont's customers within North Carolina, including gas plant in service of \$7,081,638,114, cash working capital (lead-lag) of \$66,716,330, other working capital of \$105,078,018, and deferred regulatory assets of \$68,738,002, and reduced by

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<sup>1</sup> The total stipulated revenue increase is \$74,246,161, which is \$740 more than the amount shown in Stipulation Exhibit J3 due to rounding. The rate and revenue calculations supporting Stipulation Exhibit J3 give rise to the rounding difference of \$740.

accumulated depreciation of \$1,680,866,275 and accumulated deferred income taxes of \$910,159,864.

### **Revenues and Operating Expenses**

21. As set forth in Exhibit A3 to the Stipulation, Piedmont's end-of-period pro forma revenues under its present rates of \$1,115,726,625 is reasonable and appropriate for use in this docket.

22. As set forth in Stipulation Exhibit A3, Piedmont's total annual operating expenses under current rates are \$474,503,756. Total annual operating expenses, less interest on customers' deposits of \$894,784, is subtracted from margin revenues to arrive at net operating income for return under present rates. The stipulated total annual operating expenses are reasonable and appropriate for use in this docket.

23. The various adjustments to annual operating expenses reflected in the Stipulation in Sections III.K through III.N and Sections III.P through III.R, which include non-utility adjustments, Board of Directors' expense, compensation adjustments, miscellaneous expense adjustments, uncollectibles expense, regulatory fee adjustments, and rate case expense, are reasonable and appropriate for use in this docket.

### **Capital Structure, Cost of Capital, and Overall Rate of Return**

24. As set forth in Section III.E.4 and Exhibit B of the Stipulation, the stipulated capital structure, consisting of 51.60% common equity, 47.75% long-term debt, and 0.65% short-term debt, is reasonable and appropriate for use by Piedmont in this case.

25. Piedmont's cost of long-term debt is 4.08%, as set forth in Section III.E.4 and Exhibit B of the Stipulation.

26. Piedmont's cost of short-term debt is 0.20%, as set forth in Section III.E.4 and Exhibit B of the Stipulation.

27. For the purpose of this general rate case, it is just and reasonable that Piedmont should be allowed an opportunity to earn a rate of return on common equity (ROE) of 9.60%, as set forth in Section III.E.5 and Exhibit B of the Stipulation.

28. The overall rate of return that Piedmont should be allowed the opportunity to earn on the cost of Piedmont's used and useful property is 6.90%, as set forth in Section III.E.6 and Exhibit A3 of the Stipulation. This also is the rate to be used by Piedmont as its Allowance for Funds Used During Construction (AFUDC) rate effective upon approval by the Commission.

29. The overall rate of return and ROE are supported by competent, material, and substantial record evidence; are consistent with the requirements of N.C.G.S. § 62-133 in light of changing economic conditions; and appropriately balance

Piedmont's need to maintain the safety, adequacy, and reliability of its service with the benefits received by Piedmont's customers from safe, adequate, and reliable natural gas service.

30. The capital structure, ROE, and overall rate of return set by this Order will result in just and reasonable rates.

### **Throughput**

31. For the purpose of this proceeding, as set forth in Section III.B of the Stipulation, the appropriate level of adjusted sales and transportation volumes is 135,394,767 dekatherms (dts), which is comprised of 72,624,021 dts of sales quantities and 62,770,746 dts of transportation quantities. The total throughput, which reflects the total gas sales and transportation quantities plus electric generation and other special contract quantities, is 422,497,539 dts. The appropriate level for company use and lost and unaccounted for gas is 1,958,090 dts.

### **Cost of Gas**

32. The total cost of gas reasonable and appropriate for use in this proceeding is \$370,632,970, consisting of \$244,251,008 in commodity cost of gas<sup>2</sup> and \$126,381,962 in fixed cost of gas, as described in Section III.C.2 and Exhibit A3 to the Stipulation. Any subsequent changes approved to Piedmont's Benchmark Cost of Gas are incorporated by reference.

33. The Benchmark Cost of Gas (Benchmark) reasonable and appropriate for use in this proceeding is \$3.25 per dt, as reflected in Section III.C.1 of the Stipulation.

34. The fixed cost of gas embedded in the proposed rates and used in future true-ups of fixed gas costs for periods subsequent to November 1, 2021, in proceedings under Commission Rule R1-17(k), subject to any filed changes in such costs prior to November 1, 2021, are those derived from the fixed gas cost apportionment percentages discussed in Section III.C.2 of the Stipulation and set forth in Exhibit D to the Stipulation until the resolution of Piedmont's next general rate case proceeding or the outcome of the study referenced in Section III.AB.2. of the Stipulation, whichever occurs first.

### **Rate Design**

35. The rate schedules reflecting new volumetric rates, monthly charges, and demand charges, as discussed in Section III.F of the Stipulation and reflected in Exhibit C3 of the Stipulation, are just and reasonable and appropriate for use in this docket. Furthermore, it is appropriate to adjust rates to reflect any Commission-approved: (1) changes in Piedmont's Benchmark on or before the date that the rates approved in

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<sup>2</sup> Of this total amount of commodity cost of gas, \$6,363,793 is the commodity cost of gas for company use and lost and unaccounted for gas quantities.

this docket become effective; or (2) changes in the gas demand and storage charges (components of the fixed cost of gas shown in Exhibit I to the Stipulation) that occur between the date of the Stipulation and the date that the rates approved in this docket become effective. The percentage increases by customer class that result from the rate design are shown on Exhibit J3 to the Stipulation and are just and reasonable.

### **Integrity Management Rider**

36. Continuation of the IMR in the form set forth in Appendix E to Piedmont's current North Carolina Service Regulations is reasonable, appropriate, and consistent with N.C.G.S. § 62-133.7A and should be implemented as provided in Section III.H of the Stipulation.

### **Margin Decoupling Factors**

37. The "R" values, heat load factors, and base load factors, as set forth in Exhibits E3 of the Stipulation and incorporated by reference in Section III.I of the Stipulation, are reasonable and appropriate for use with Piedmont's Margin Decoupling Tracker (MDT) mechanism.

### **Amortization of Certain Regulatory Deferred Assets/Liabilities**

38. As set forth and described in Section III.J. of the Stipulation, the quantification and amortization of certain regulatory deferred assets/liabilities, including deferred TIMP O&M costs (PIM-T) and deferred DIMP O&M costs (PIM-D), Eastern NCNG O&M costs, deferred environmental compliance assessment and clean-up O&M costs, and under-collected regulatory fee payments are reasonable and appropriate.

### **Amortization of Federal Protected Excess Deferred Income Taxes**

39. It is reasonable and appropriate to update the amortization of protected excess deferred income taxes (EDIT) in the cost of service for the Stipulation using the current average rate assumption method (ARAM), as set forth in Section III.T. of the Stipulation.

### **EDIT Riders**

40. As reflected in Exhibit L3 to the Stipulation and as set forth in Section III.U. of the Stipulation, it is reasonable and appropriate to continue the Federal Unprotected EDIT and State EDIT rider rates based on the remaining amortization periods approved in Docket No. G-9, Sub 743, and to update the Federal Unprotected EDIT and State EDIT rider rates based upon the overall rate of return of 6.90% established by this order.

## **Depreciation**

41. As set forth in Section III.V. of the Stipulation, it is reasonable and appropriate to continue the depreciation rates and reallocations of book reserves, approved in Docket No. G-9, Sub 743, and to reduce depreciation expense to reflect the impacts of the reallocation of the reserve accounts related to the North Carolina direct and corporate allocated general plant accounts.

## **EE Programs and Rider**

42. It is reasonable and appropriate for the Commission to authorize Piedmont's proposed EE program portfolio, which consists of the School Conservation Education Program, Low-Income Program, Residential HVAC and Water Heating Program, Commercial HVAC & Water Heating Rebate Program, Commercial Food Services Program, and Residential New Construction Program, for a three-year pilot program to commence within six months of this order. Further, as set forth in Section III.AA of the Stipulation, as supplemented by the joint Piedmont and Public Staff filings of September 27, 2021, and October 8, 2021, it is reasonable and appropriate for Piedmont to recover its EE program costs through a rider recovery mechanism.

## **Studies**

43. As set forth in Section III.AB of the Stipulation, it is reasonable and appropriate for the Commission to require that, prior to the earlier of Piedmont's next general rate case or its 2023 annual review of gas costs proceeding (2023 Annual Review), Piedmont study: (1) its current method of allocating its transmission plant assets to North Carolina and South Carolina for the purpose of determining whether this method is fair to each state's customers in light of the fact that Piedmont plans for future supply and capacity resources based on a combination of both North Carolina and South Carolina demands, and (2) its regression analysis to determine whether there is a more accurate breakdown of system usage among customer classes and the North Carolina and South Carolina jurisdictions. The Commission further finds it is reasonable and appropriate to require that, prior to the earlier of Piedmont's next general rate case or its 2023 Annual Review, that Piedmont study the allocation of its LNG plant assets between North Carolina and South Carolina for the purpose of determining whether its current method is fair to each state's customers in light of the fact that Piedmont plans for future supply and capacity resources based on demand created by Piedmont's North Carolina and South Carolina service territories.

## **Changes to Tariffs and Service Regulations**

44. The changes to Piedmont's Tariffs and Service Regulations as specified in Section III.W of the Stipulation and set forth in Exhibits G and H to the Stipulation, respectively, are reasonable and appropriate.

## **Gas Extension Feasibility Model**

45. Revisions to Piedmont's model used to calculate the feasibility of extending natural gas service to its residential and commercial customers to reflect: (1) use of an investment horizon of 40 years or an appropriate length of time that matches the book lives of the gas plants; (2) use of Piedmont's approved net of tax overall rate of return as the discount rate employed for the net present value analysis approved in Piedmont's most recent rate case; and (3) an adjustment of all future cash inflows by a long-term inflation rate of 2%, as set forth in Section III.Y of the Stipulation, is reasonable and appropriate.

## **Affordability**

46. The participation of Piedmont in the affordability stakeholder collaborative currently being conducted pursuant to the Commission's Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Customer Notice issued on March 31, 2021, in Docket Nos. E-7, Subs 1187, 1213, and 1214; and its Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Customer Notice issued April 16, 2021, in Docket Nos. E-2, Subs 1193 and 1219, as set forth in Section III.Z. of the Stipulation, is reasonable and appropriate.

## **Termination of Line 434 Revenue Rider**

47. It is reasonable and appropriate to terminate the Line 434 Rider, which was approved by the Commission in Docket No. G-9, Sub 743.

## **Accounting for Deferred Costs**

48. Piedmont is authorized to receive a specific amount of revenue for each of the deferred costs approved by this Order. If Piedmont receives revenue for any deferred cost for a longer period of time than the amortization period approved by the Commission for that deferred cost, Piedmont shall continue to record all revenue received for that deferred cost in the specific regulatory asset account established for that deferred cost until its next general rate case.

## **Stipulation as a Whole**

49. The Stipulation is just and reasonable to all parties to this proceeding and serves the public interest.

## **Docket No. G-9, Sub 722 Issues (Sub 722 Issues)**

50. The 2004 Gas Redelivery Agreement (Original Agreement) between Piedmont and Duke Power, a Division of Duke Energy Corporation, the predecessor of DEC, is the most recent special contract setting the rates and terms by which Piedmont constructed and operates gas transmission facilities (Original Facilities), that provide natural gas redelivery service to DEC's Lincoln County Combustion Turbine Facility

(Lincoln Plant). The Original Agreement included a demand charge and covered gas supply to 16 combustion turbines (CTs) at the Lincoln Plant. It was approved by the Commission on September 3, 2004, in Docket No. G-9, Sub 491.

51. The infrastructure costs of the Original Facilities have been fully recovered through the Original Agreement and a previous similar contract that was approved by the Commission in 1994 in Docket No. G-9, Sub 352.

52. In 2018 Piedmont and DEC entered into a Consolidated Natural Gas and Redelivery Services Agreement (Revised Agreement), and later a revised Consolidated Natural Gas Construction and Redelivery Services Agreement (Second Revised Agreement) for construction and operation by Piedmont of incremental natural gas transmission facilities (New Facilities) to provide natural gas redelivery service to one additional CT located at DEC's Lincoln Plant.

53. The Second Revised Agreement consolidated, superseded, and expanded upon DEC's and Piedmont's rights and responsibilities under the Original Agreement for services at the Lincoln Plant.

54. The volumetric system support surcharge negotiated by Piedmont and DEC and included in the Second Revised Agreement, coupled with the consolidated rate structure from the Original Agreement, is reasonable and appropriate for recovering Piedmont's cost of service to the Lincoln Plant.

55. The rates established by the Second Revised Agreement are designed to and will compensate Piedmont for its full cost of service to DEC at the Lincoln Plant.

56. The Second Revised Agreement is just and reasonable and was not made for the purpose of concealing, transferring, or dissipating the earnings of Piedmont or DEC, and will not have such an effect.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-6**

The evidence supporting these findings of fact and conclusions is contained in Piedmont's verified Petition, the testimony and exhibits of Piedmont's witnesses, Piedmont's Form G-1, and the entire record in this proceeding. These findings are informational, jurisdictional, procedural in nature, and are not contested by any party.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7-8**

The evidence supporting these findings of fact and conclusions is contained in the Petition, the direct testimony of Piedmont witness Bowman, the Stipulation, and the entire record in this proceeding.

In its Petition, Piedmont utilizes a test period of the twelve months ended December 31, 2020, in presenting its Petition and exhibits for the requested rate increase.



The direct testimony of Piedmont witness Bowman describes the test period and states that Piedmont based its Petition on the twelve-month period ending December 31, 2020. In the Commission's May 17, 2020 Order, it ordered the parties to use a test period consisting of the twelve months ending December 31, 2020, with appropriate adjustments.

The Stipulation reflects that the test period for this rate case is the twelve months ending December 31, 2020, adjusted for certain changes in plant, throughput, and costs that were not known at the time the case was filed but that are based upon circumstances occurring or becoming known through June 30, 2021. This test period is not contested by any party.

Based upon the unopposed evidence, the Commission concludes that the twelve months ended December 31, 2020, adjusted for certain changes in plant, throughput, and costs that were not known at the time the case was filed but are based upon circumstances occurring or becoming known through June 30, 2021, is the appropriate test period for use in this proceeding.

### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-13**

The evidence for these findings of fact and conclusions is contained in the Stipulation, the Petition, the direct testimony and exhibits of the witnesses, the settlement testimony of Piedmont witnesses Powers, Couzens, and D'Ascendis, the settlement testimony of Public Staff witnesses Hinton and Perry, and the entire record in this proceeding.

In her settlement testimony, Piedmont witness Powers describes an extensive audit and negotiation process between Piedmont and the Public Staff, in which Piedmont responded to more than 840 discrete questions (not including parts and subparts) of 137 sets of discovery requests and participated in several video conference meetings with the Public Staff in an effort to reach an agreed resolution of this proceeding. According to witness Powers, as supported by the record in this proceeding, those efforts were successful, and Piedmont and the Public Staff were able to reach an agreement on the majority of the contested issues in this proceeding. Piedmont also held discussions with CUCA and CIGFUR IV in an effort to obtain their consent to join in the settlement, and did so, after reaching a proposed rate design that was acceptable to all. That agreement is reflected in the Stipulation filed in this matter. The Stipulation is binding as between Piedmont, the Public Staff, CUCA, and CIGFUR IV and conditionally resolves all matters in this case as between those parties, except as specifically indicated otherwise in Section II.A. of the Stipulation.<sup>3</sup>

Additionally, Piedmont witness D'Ascendis and Public Staff witness Hinton filed settlement testimony supporting the stipulated capital structure and overall rate of return,

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<sup>3</sup> At the time the Stipulation was filed there were two unresolved issues between the Stipulating Parties described in Section II.A. and II.B of the Stipulation. The EE rider cost allocation issue originally reflected in Section II.B. was subsequently resolved by the Stipulating Parties.

and the stipulated revenue allocation and rate design are supported by the testimony of Piedmont witness Couzens.

Further, Public Staff witness Perry's settlement testimony outlines the benefits the Stipulation provided for ratepayers and provides a reconciliation of the June Updates and settlement adjustments to Piedmont's initial rate increase request.

According to witness Powers, Piedmont did not reach out to the AGO, DEC, Nucor, or FPWC as these parties did not file testimony in this proceeding on any of the stipulated issues. These parties did not join in the Stipulation, nor did they oppose the Stipulation in any filing or at the hearing of this matter. The Commission concludes that these actions indicate that the AGO, DEC, Nucor and FPWC neither support nor oppose the Stipulation.

Under North Carolina law, a stipulation entered into by less than all parties in a contested case proceeding under Chapter 62 "should be accorded full consideration and weighed by the Commission with all other evidence presented by any of the parties in the proceeding." *State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, Inc.*, 348 N.C. 452, 466, 500 S.E.2d 693, 703 (1998). Further, "[t]he Commission may even adopt the recommendations or provisions of the nonunanimous stipulation as long as the Commission sets forth its reasoning and makes 'its own independent conclusion' supported by substantial evidence on the record that the proposal is just and reasonable to all parties in light of all the evidence presented." *Id.*

Based upon the entire record, the Commission concludes that the Stipulation is the product of robust discovery and extensive negotiations. The Commission further finds that the Stipulation represents a reasonable and appropriate resolution to the majority of the matters initially in dispute in this proceeding, and that the Stipulation is either supported or not opposed by all parties to the proceeding. Accordingly, the Stipulation constitutes material evidence of the appropriate resolution of most of the issues in this proceeding and will be treated as such by the Commission.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14-19**

The evidence for these findings of fact and conclusions is set forth in the Petition, the June Updates, the Stipulation, the prefiled direct and settlement testimony and exhibits of Piedmont witness Powers, and the prefiled direct, supplemental, settlement, and supplemental settlement testimony and exhibits of Public Staff witness Perry.

In the Petition, as supported by the prefiled direct testimony and exhibits of Piedmont witness Powers, Piedmont seeks a margin revenue increase in this case of \$109,025,725. As reflected in the prefiled testimony and exhibits of Public Staff witness Perry, the Public Staff's initial recommendation was for a margin revenue decrease of \$462,808.

In the June Updates, as supported by the supplemental testimony of Piedmont witness Bowman, Piedmont's proposed margin revenue decreased to \$96,872,105.

As reflected on Stipulation Exhibit A3, the Stipulating Parties agreed to a margin revenue increase of \$67,314,874, approximately a \$41.7 million reduction from Piedmont's original margin revenue request.

Witness Powers' direct testimony explains that Piedmont's revenue request, as filed in Piedmont's Petition, at a total increase of \$109.0 million would increase Piedmont's annual revenue by approximately \$95 per residential customer (or an average monthly increase of just under \$8). In witness Powers' settlement testimony, she states that the annual residential customer impact under the Stipulation, excluding the Robeson LNG Plant costs and Pender-Onslow Expansion project costs, is approximately \$37 (or an average monthly increase of approximately \$3). Witness Powers states that including the Robeson LNG Plant costs and Pender-Onslow Expansion project costs, as currently estimated, results in an annual residential customer impact under the Stipulation of approximately \$65 (or an average monthly increase of approximately \$5.50).

Witness Perry's settlement testimony states that once the Public Staff has completed the audit of Piedmont's actual costs booked to plant based on the performance metrics agreed to with Public Staff for the Robeson LNG Plant and the actual cost data closed to plant for the Pender-Onslow Expansion project, as set forth in Section III.D.1 and III.D.2 of the Stipulation, the Public Staff will file schedules supporting the Public Staff's final recommended revenue requirement. That filing was made by the Public Staff on October 18, 2021, and reflects a total revenue requirement increase of \$74,246,160.

No other party filed testimony as to the appropriate level of revenues for this proceeding.

In making the following conclusion, the Commission has exercised its independent judgment. Based on the Stipulation, the related evidence discussed herein, and the cumulative testimony and exhibits supporting individual components of the stipulated revenue requirement increase discussed throughout this Order, including the discussion and analysis related to the proper rate of overall return and ROE for use in this proceeding, the Commission finds that the stipulated revenue requirement increase in this case, subject to final update, is just, reasonable, and fair.

## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20**

The evidence for this finding of fact is contained in the Petition, the June Updates, the prefiled direct and supplemental testimony and exhibits of Piedmont witness Bowman, the prefiled direct testimony and exhibits of Public Staff witnesses Perry and Feasel, the Stipulation, the Affidavit of Adam Long filed on October 11, 2021, the supplemental settlement testimony of Piedmont witness Powers, and the supplemental settlement testimony of Public Staff witness Perry.

In the Petition, Piedmont seeks a net annual revenue increase of approximately \$109 million based, in part, on increases in rate base since its last general rate proceeding in 2019 in Docket No. G-9, Sub 743. Piedmont also reserves its rights pursuant to

N.C.G.S. § 62-113(c) to update its projected plant up to and including the date of hearing in this matter.

Piedmont witness Bowman's Exhibit (QPB-1) indicates that the end of test period rate base for Piedmont was \$4,219,562,288, which consists of plant in service plus an allowance for working capital less accumulated depreciation and accumulated deferred income taxes. Witness Bowman's prefiled direct testimony projects that, at the end of June, rate base would be \$4,822,658,811.

Perry Exhibit I, Schedule 2 indicates that the Public Staff's projected rate base at the end of the test period was \$4,253,910,975, relying in part on the testimony of Public Staff witness Feasel.

Consistent with the Commission's Rules and the provisions of the Commission's May 17, 2020 Order, Piedmont filed its June Updates on July 28, 2021. The June Updates are supported by the supplemental testimony of Piedmont witnesses Bowman and Couzens. Witness Bowman's Exhibit\_\_(QPB-1 Updated) provides Piedmont's updated rate base of \$4,736,323,899, consisting of plant in service of \$7,088,221,950, plus an allowance for working capital of \$243,781,462, less accumulated depreciation of (\$1,685,129,720) and accumulated deferred income taxes of (\$910,549,794) as of June 30, 2021. Witness Bowman testifies that the June Updates reflect actual rate base as of June 30, 2021, with the exception of the projected in-service amounts of the Robeson LNG Plant and Pender-Onslow Expansion project, which were pending completion and closure to plant at that time. Witness Bowman explains that the Robeson LNG Plant and Pender-Onslow Expansion project were not in service as of June 30, 2021, but that they were expected to be in service before the hearing concluded. As such, witness Bowman states that Bowman Exhibit \_\_\_\_(QPB-1 Updated) reflects actual rate base as of June 30, 2021, as amended for the effect of the current projection of the in-service amounts of the Robeson LNG Plant and Pender-Onslow Expansion project.

Stipulation Exhibit A1 and Section III.D.3 demonstrates the Stipulating Parties' agreement that Piedmont's rate base for purposes of this proceeding should be \$4,444,264,180, consisting of gas plant in service of \$6,790,930,589, other working capital of \$105,078,018, cash working capital of \$64,571,272, and deferred regulatory assets of \$68,738,002, less accumulated depreciation of (\$1,674,893,838) and accumulated deferred income taxes of (\$910,159,864) and subject to adjustment as provided in Sections III.D.1 and III.D.2 of the Stipulation. However, the Stipulating Parties explain that these rate base amounts do not include the estimated plant in service attributable to the Robeson LNG Plant and Pender-Onslow Expansion project. Due to the potential impacts on rate base to include the costs of the Robeson LNG Plant and Pender-Onslow Expansion project, Piedmont also reflected estimated revised rate base calculations inclusive of the estimated in-service costs of the Robeson LNG Plant and Pender-Onslow Expansion project in Exhibit A2 to the Stipulation.

On September 27, 2021, Piedmont filed its compliance filing in this proceeding consisting of Piedmont's actual costs for the Robeson LNG Plant and Pender-Onslow

Expansion project closed to plant as of August 31, 2021. On October 11, 2021, with leave of the Commission, Piedmont filed the affidavit of Adam Long attesting to the completion, operability, and closure to plant of the Robeson LNG Plant.

On October 18, 2021, Piedmont filed the supplemental settlement testimony and exhibits of witness Powers and the second supplemental testimony of witness Long and the Public Staff filed the supplemental settlement testimony of witness Perry, all of which supported the inclusion of actual Robeson LNG Plant and Pender-Onslow Expansion Project plant additions filed by Piedmont on September 27, 2021, into rate base in this proceeding.

No other party presented evidence on Piedmont's rate base.

The amounts shown on Exhibit A3 to the Stipulation are the result of negotiated adjustments to Piedmont's June Updates position reflecting actual investment for the Robeson LNG Plant and Pender-Onslow Expansion project closed to plant as of August 31, 2021, and were agreed to by the Stipulating Parties in this docket, as described in the Stipulation and the supplemental settlement testimony of Piedmont witness Powers, the affidavit and supplemental testimonies of Piedmont witness Long, and the supplemental settlement testimony of Public Staff witness Perry. Under the Stipulation, and by and through the filings of Piedmont and the Public Staff after the Stipulation, the Stipulating Parties agree to a rate base that includes the final actual costs of these two projects closed to plant as of August 31, 2021. Through these same filings, Piedmont and the Public Staff demonstrate that this plant is used and useful in providing utility service to the public and is eligible for rate base treatment in this proceeding pursuant to N.C.G.S. § 62-133(c).

The Commission has carefully reviewed these amounts and all record evidence relating to Piedmont's rate base. The Commission has considered the benefits of the Stipulation as a whole to customers in its treatment of rate base, deferred regulatory assets, and regulatory liabilities and has considered the right of Piedmont and the Public Staff to present "relevant, competent and material evidence . . . tending to show actual changes in . . . the public utility's property used and useful within a reasonable time after the test period, in providing the service rendered to the public within this state . . ." In light of the support for the Stipulation by a plurality of the parties to this proceeding, and the absence of any evidence challenging the stipulated rate base or any of the respective components thereof, the Commission concludes that the stipulated rate base at June 30, 2021, the individual components thereof, and the updates for the completed Robeson LNG Plant and Pender-Onslow Expansion project as of August 31, 2021, are just and reasonable and appropriate for use in this proceeding.

### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 21-23**

The evidence supporting these findings of fact and conclusions is set forth in the Stipulation, Piedmont's Petition, Piedmont's witness testimony and exhibits, including the

settlement testimony of Piedmont witness Powers, the Public Staff's witness testimony and exhibits, and the entire record in this proceeding.

The end of test period margin revenues under Piedmont's present and stipulated proposed rates are set forth in Section III.E and Exhibit A3 to the Stipulation. The amounts shown on Exhibit A3 to the Stipulation are the result of negotiations among the Stipulating Parties in this docket following an extensive audit of Piedmont's filed case by the Public Staff and are described in the Stipulation and the settlement and supplemental testimonies of Piedmont and Public Staff witnesses. The stipulated margin revenues represent a reduction of approximately \$41.7 million from the margin revenues contained in the original Petition and a reduction of \$29.56 million from the revenues reflected in the June Updates.

No party except the Public Staff submitted evidence on Piedmont's revenues, stipulated capital structure, ROE, and the stipulated revenues.

Piedmont's annual operating expenses under present rates, including the settlement adjustments, are \$474,503,756. The total annual operating expenses, less interest on customers' deposits of \$894,784, are subtracted from margin revenues to arrive at net operating income for return under present rates. This is set forth in Section III.E.3 to the Stipulation and reflected on Exhibit A3 to the Stipulation. This amount includes the individual adjustments described in Sections III.K through III.N and Sections III.P through III.R of the Stipulation and in the settlement testimony of Piedmont witness Powers. These adjustments, as shown on Piedmont witness Powers' Settlement Exhibit\_(PKP-1) and Exhibit\_(PKP-2) and also shown in witness Powers' Supplemental Settlement Exhibit\_(PKP-1), are as follows: (1) an adjustment of (\$547,483) for non-utility operations; (2) an adjustment of (\$362,829) to Board of Directors expense; (3) adjustments to compensation related expenses of (\$15,965) for payroll, (\$436,672) for pension and other benefits, (\$1,313,594) for employee or other benefits, (\$270,949) for executive compensation, and (\$367,973) for incentives; (4) adjustments for miscellaneous expenses such as (\$384,905) for advertising, (\$192,202) for aviation expense, (\$76,564) for lobbying, (\$63,771) for sponsorships and donations, (\$160,589) for inflation, and (\$438,384) for COVID-related expenses; (5) an adjustment of (\$1,015,778) for uncollectibles expense; (6) an adjustment of \$3,797 to bring the regulatory fee expense to a level based on the current effective rate of 0.13%; and (7) an adjustment to rate case expense of (\$175,794).

The amounts shown on Exhibit A3 to the Stipulation and the adjustments reflected in Settlement Exhibit\_\_(PKP-1), Exhibit\_(PKP-2), and in Supplemental Settlement Exhibit\_(PKP-1), are the result of negotiations between the Stipulating Parties in this docket as described in the settlement testimony of witness Powers.

No other party submitted evidence as to Piedmont's reasonable operating expenses and the stipulated reasonable operating expenses of Piedmont are not contested by any party.

The Commission has carefully reviewed the pro forma margin revenues and operating expenses set forth in the Stipulation, as well as all record evidence relating to pro forma revenues and operating expenses. In its independent judgment, the Commission concludes that the stipulated pro forma margin annual revenues and operating expenses are reasonable and appropriate for use in this docket.

## **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 24-30**

The evidence for these findings of facts is contained in the verified Application and Form G-1, the prefiled direct and rebuttal testimony and exhibits of Piedmont witnesses Newlin and D'Ascendis, the supplemental testimony and exhibits of Piedmont witness Bowman, the direct testimony and exhibits of Public Staff witness Hinton, the direct testimony and exhibits of CUCA witness O'Donnell, the direct testimony and exhibits of CIGFUR IV witness Phillips, the settlement testimony and exhibits of Piedmont witness D'Ascendis and Public Staff witness Hinton, and the Stipulation.

### **Capital Structure and Cost of Debt**

#### ***Summary of the Evidence***

Piedmont witness Newlin's prefiled direct testimony proposes a capital structure consisting of 52.00% common equity, 47.45% long-term debt at a cost of 4.09%, and 0.55% short-term debt at a cost of 0.47%. Tr. vol. 3, 105-07. As has been consistently the case in prior Piedmont rate cases, the short-term debt figure was calculated based upon Piedmont's gas in storage inventory costs.

Witness Newlin's direct testimony states that Piedmont's capital structure changes over time based on a variety of factors, including issuances of debt and equity and the accumulation of retained earnings, but that Piedmont will manage its operations within a reasonable range of the proposed capital structure. Witness Newlin also testifies that the proposed capital structure was reasonable because it balanced risk with cost to customers, would provide Piedmont with an opportunity to compete for capital at reasonable rates, and was generally supportive of Piedmont's ability to reasonably manage its costs of capital.

Finally, Witness Newlin provides examples of Piedmont's anticipated actual capital structure<sup>4</sup> at four points in time differentiated by projected changes in that capital structure resulting from debt and equity transactions of Piedmont and the accumulated impacts of retained earnings over time.

Witness Bowman's supplemental testimony states that due to its issuance of long-term debt in March 2021, the interest rate paid by Piedmont on its long-term debt

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<sup>4</sup> Piedmont's anticipated actual capital structure includes a proxy for short-term debt as proposed in the testimony of Piedmont witness Newlin and Public Staff witness Hinton. The debt costs reflected in the Stipulation are those recommended by Public Staff witness Hinton in his direct testimony.

had fallen to 4.08%. Further, she updated the embedded cost of short-term debt to the actual figure of 0.35% as of June 30, 2021. Tr. vol. 3, 492.

Public Staff witness Hinton's direct testimony recommends a capital structure for Piedmont consisting of 50.54% equity, 48.81% long-term debt at a cost of 4.08%, and 0.65% short-term debt at a cost of 0.20%. Witness Hinton's analysis of Piedmont's capital structure is based upon his calculation of a 13-month average of equity, long-term debt, and gas inventory costs from May 31, 2020, through May 31, 2021. His projected costs of debt were based upon his calculation of Piedmont's actual long-term debt costs at May 31, 2021, and a 13-month average of Piedmont's short-term debt costs at May 31, 2021. Tr. vol. 4, 217-21.

CUCA witness O'Donnell's direct testimony disagrees with Piedmont's proposed capital structure but accepts Piedmont's cost of debt. Specifically, witness O'Donnell recommends a capital structure for Piedmont consisting of 50.00% equity, 49.43% long-term debt at a cost of 4.09%, and 0.57% short-term debt at a cost of 0.47%. Tr. vol. 4, 35.

Witness Newlin's rebuttal testimony responds to recommendations related to capital structure raised by Public Staff witness Hinton and CUCA witness O'Donnell. Witness Newlin testifies that witness Hinton's equity ratio calculation is flawed because it does not account for significant equity increases underlying Piedmont's capitalization, one of which had already occurred. Witness Newlin also testifies that he disagrees with witness O'Donnell's equity ratio because the basis from which witness O'Donnell formed his recommendation is flawed. Specifically, witness Newlin states that most of the comparative equity ratios witness O'Donnell cites are not applicable to Piedmont's equity ratio for rate-setting purposes.

In the Stipulation, Piedmont, the Public Staff, CUCA, and CIGFUR IV agree that the capital structure appropriate for use in this proceeding is 51.60% equity, 47.75% long-term debt at a cost of 4.08%, and 0.65% short-term debt at a cost of 0.20%.<sup>5</sup>

Public Staff witness Hinton's settlement testimony explains some of the factors underlying the difference between his original proposed capital structure and the capital structure reflected in the Stipulation. He also indicates that in the context of settlements, parties sometimes agree to individual adjustments, structures, or costs as part of a whole agreement, when those adjustments, structures, or costs might not be acceptable to them in isolation. Witness Hinton further states that, given the benefits of the settlement as a whole, he believes the cost of capital components of the settlement are a reasonable resolution of otherwise contentious issues. Witness Hinton also testifies that the stipulated capital structure was supported by the fact that nationally, the average equity ratio approved for natural gas utilities over the period January 1, 2018, through August 31, 2021, was 51.94%, and since January 1, 2020, the average approved ratio has been

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<sup>5</sup> The debt costs reflected in the Stipulation are those recommended by Public Staff witness Hinton in his direct testimony.



51.80%.<sup>6</sup> Moreover, witness Hinton states that the Commission's recent rate case orders for natural gas and electric utilities are consistent with a 51.60% equity ratio stipulated to by the Stipulating Parties in this rate case.

Piedmont witness D'Ascendis' settlement testimony is supportive of the stipulated capital structure. He states that the stipulated equity ratio is slightly below the median authorized equity ratio in supportive regulatory jurisdictions (51.98%) but is well within the range of equity ratios authorized in those jurisdictions (38.30% to 59.64%). Therefore, witness D'Ascendis supports the stipulated capital structure.

## **Discussion and Conclusions**

Based upon its own review and independent analysis of the evidence, the Commission concludes that a capital structure of 51.60% equity, 47.75% long-term debt at a cost of 4.08%, and 0.65% short-term debt at a cost of 0.20%, as is reflected in the Stipulation, is just and reasonable and appropriate for use in this proceeding on several grounds.

First, this capital structure is very close to the capital structures initially proposed by both Piedmont and the Public Staff in this proceeding. Second, as testified to by Piedmont witness Newlin, it is reflective of the actual experience and planned capitalization of Piedmont from December 31, 2020, through December 31, 2022. Third, the cost of debt underlying the stipulated capital structure was recommended by Public Staff witness Hinton in his direct testimony. Fourth, while the Commission recognizes that Public Staff witness Hinton recommended a lower equity component in his original testimony, his settlement testimony makes clear that the primary differences between his calculation of an equity band and Piedmont's calculation are differences in methodology. Furthermore, his settlement testimony is unequivocal in its opinion that the stipulated capital structure is reasonable for use in this proceeding and is below national averages. Accordingly, based on the matters set forth above, and in the exercise of its independent judgment, the Commission finds that the weight of the evidence in this proceeding favors using the stipulated capital structure and that such capital structure is just, reasonable, and appropriate for use in setting rates in this docket.

The Commission also finds the 4.08% stipulated cost of long-term debt and 0.20% cost of short-term debt are just and reasonable. These debt costs are supported by the direct and settlement testimony of Public Staff witness Hinton, and by the settlement testimony of Piedmont witness D'Ascendis. The Commission therefore finds and concludes that the use of a long-term debt cost of 4.08% and a short-term debt cost of 0.20% per the terms of Section E.4 of the Stipulation is supported by the greater weight

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<sup>6</sup> This calculation excludes the decisions of four states, Arkansas, Florida, Indiana, and Michigan, because these jurisdictions include deferred taxes and other non-capital items in the approved capital structure. As such, the approved equity ratios are not comparable to those used in North Carolina ratemaking and would bias the average equity ratio downward.

of the substantial evidence and is just and reasonable to all parties in light of all the evidence presented.

## **Rate of Return on Equity Capital**

### ***Summary of the Evidence***

Piedmont's Petition requests approval for its rates to be set using an overall rate of return of 7.27% and a rate of return on equity of 10.25%. This request was based upon and supported by the direct testimony and exhibits of Piedmont witness D'Ascendis. These rates of return compare to an overall return of 7.14% and a rate of return on equity of 9.70% underlying Piedmont's current rates.<sup>7</sup> Other witnesses for the Public Staff, CUCA, and CIGFUR IV also filed direct testimony on the appropriate rate of return on equity. This evidence was followed by the rebuttal testimony of Piedmont witness D'Ascendis, the Stipulation, and settlement testimony filed by Piedmont witnesses D'Ascendis and Powers, and Public Staff witness Hinton. In addition to this expert testimony, the Commission received the testimony of a number of public witnesses on Piedmont's proposed rate increase (which indirectly implicated the question of the appropriate rate of return on common equity for Piedmont). All of this evidence is summarized below.

#### *Direct Testimony of Dylan W. D'Ascendis (Piedmont)*

Piedmont witness D'Ascendis' direct testimony recommends a rate of return on equity within the range of 9.58% to 12.30%. Tr. vol. 3, 150. Witness D'Ascendis indicates that because all models are subject to various assumptions and constraints, equity analysts and investors tend to use multiple methods to develop their return requirements. For this reason, he applied the following three accepted approaches to develop his rate of return recommendation: (1) the Discounted Cash Flow (DCF) model; (2) the Risk Premium Model (RPM) model; and (3) the Capital Asset Pricing Model (CAPM). Witness D'Ascendis applies these three methodologies to a proxy group of eight publicly traded natural gas distribution companies (Utility Proxy Group). Witness D'Ascendis also utilizes the cost of equity applied to a proxy group of 47 domestic, non-price regulated companies (Non-Price Regulated Proxy Group). *Id.*

Witness D'Ascendis' direct testimony states that applying the DCF, RPM, and CAPM to the Utility Proxy Group and Non-Price Regulated Proxy Group results in a range of common equity cost rates, before any relative risk adjustment, of 9.46% and 12.18%. However, witness D'Ascendis recommends that the rate of return on common equity range of 9.46% to 12.18% should be adjusted to reflect floatation costs. Witness D'Ascendis testifies that applying his recommended 0.12% floatation cost adjustment to the indicated cost of common equity range results in a Piedmont-specific cost of common

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<sup>7</sup> Order Approving Stipulation, Granting Partial Rate Increase, Line 434 Revenue Rider, EDIT Riders, Provisional Revenues Rider, and Requiring Customer Notice, Docket No. G-9, Sub 743 (Oct. 31, 2019) (rates effective Nov. 1, 2019).

equity range of 9.58% to 12.30%. Based on that range and his analyses, witness D'Ascendis concludes that 10.25% was a reasonable and appropriate estimate of Piedmont's cost of common equity in this proceeding.

In assessing the reasonableness of his recommended return, witness D'Ascendis testifies that he also considers the economic conditions in North Carolina. Specifically, witness D'Ascendis testifies that he considered: (1) the economic conditions in North Carolina in light of the COVID-19 pandemic; (2) unemployment at both the state and county level as compared to national rates of unemployment; (3) real Gross Domestic Product (GDP) in North Carolina; and (4) the median household income in North Carolina as it corresponds to national levels. *Id.* at 199-200. He concludes that the economic conditions in North Carolina are highly correlated to those of the United States as a whole, and as such, are reflected in the analyses used to determine the cost of common equity.

*Direct Testimony of John R. Hinton (Public Staff)*

Public Staff witness Hinton's direct testimony recommends a fair rate of return to be used in establishing Piedmont's rates. To determine the cost of common equity for Piedmont, witness Hinton used a DCF model and a regression analysis of approved returns for local distribution companies (LDC) to determine the cost of equity. He also used a Comparable Earnings Analysis as a check on the results of his DCF analysis and his regression analysis. Public Staff witness Hinton disagrees with witness D'Ascendis' exclusive use of forecasted earnings per share in the DCF model, his estimate of the expected market return, and the market premium used in his CAPM. According to witness Hinton, the results of his DCF analysis indicates a cost of equity ranging from 9.10% using historical growth rates, to 9.73% using predicted growth rates, to 9.35% based on an average of all of the growth rates. Witness Hinton combines these results with a regression analysis result that indicates a cost of equity of 9.50%. The average of the four estimates produces an average cost of equity of 9.42%, which is central to witness Hinton's range of cost of equity estimates ranging from 9.10% to 9.73%. As such, Public Staff witness Hinton recommends a cost of common equity for Piedmont of 9.42%.

In assessing the reasonableness of his recommended return, Public Staff witness Hinton also considered: (1) Piedmont's credit quality; (2) the continued role of Piedmont's IMR mechanism in reducing regulatory lag; (3) the role Piedmont's MDT has played in stabilizing the residential and small commercial customers' revenue and on Piedmont's earnings; and (4) the impact of changing economic circumstances.

*Direct Testimony of Kevin W. O'Donnell (CUCA)*

CUCA witness O'Donnell's direct testimony recommends that Piedmont be given the opportunity to earn a 9.0% rate of return on equity, which is based on the upper end of the DCF results for the proxy group (7.50% – 9.50%), well above the CAPM results (6.0% – 8.0%), and at the low end of his Comparable Earnings results (9.0% – 10.0%). Witness O'Donnell contends that Piedmont's requested rate of return on equity is excessive, unnecessary, and burdensome on North Carolina ratepayers, especially in

light of the current economic conditions brought on by the COVID-19 pandemic. He alleges that the models and inputs used by Piedmont witness D'Ascendis to determine Piedmont's cost of equity are flawed and do not reflect market conditions.

Witness O'Donnell also states that Piedmont's return on equity request (10.25%) was inappropriate in light of the current state of the financial markets. Even though all markets were impacted by the COVID-19 pandemic, witness O'Donnell testifies that utilities such as Piedmont have not had an issue accessing the capital markets. In light of this, witness O'Donnell states that Piedmont does not need a 10.25% return on equity to attract and compete for capital in the current economic environment.

*Direct Testimony of Nicholas Phillips, Jr. (CIGFUR IV)*

CIGFUR IV witness Phillips' direct testimony offers the opinion that Piedmont's proposed return on equity of 10.25% was excessive and that its allowed return on equity in this proceeding should be capped at 9.56% based on the average rate of return on equity approved for natural gas LDCs for the twelve months ending March 31, 2021, as reported by Regulatory Research Associates. Witness Phillips further opines that the Commission also should consider the IMR and any other cost recovery mechanisms, which provide Piedmont with additional cost recovery outside of a base rate case, in setting a reasonable rate of return on equity.

*Rebuttal Testimony of Dylan W. D'Ascendis (Piedmont)*

Piedmont witness D'Ascendis' rebuttal testimony responds to the direct testimony of Public Staff witness Hinton, CUCA witness O'Donnell, and CIGFUR IV witness Phillips. His testimony also updated many of the analyses contained in his direct testimony to reflect current data. Witness D'Ascendis testifies that based on his updated analyses, the range of reasonable rates of return on equity attributable to Piedmont is between 9.59% and 12.72% (unadjusted) and 9.70% to 12.83% (adjusted). Therefore, witness D'Ascendis testifies that his rate of return on equity recommendation of 10.25% remained reasonable, if not conservative.

Witness D'Ascendis testifies that witness Hinton's and witness O'Donnell's recommended rates of return on equity were insufficient, in part, due to their substantial and excessive reliance on the DCF model results which tend to understate Piedmont's return requirement in the current market. Instead, witness D'Ascendis recommends the use of multiple cost of equity models in conjunction with informed expert judgment to provide a clearer picture of the investor-required rate of return on equity.

The areas in which witness D'Ascendis disagrees with witness Hinton specifically include: (1) witness Hinton's proxy group; (2) witness Hinton's use of growth rates other than projected growth in earnings per share (EPS) in his application of the DCF; (3) certain inputs used in witness Hinton's RPM; (4) certain assumptions and inputs in witness Hinton's CEM; and (5) witness Hinton's failure to reflect flotation costs.

The areas in which witness D'Ascendis disagrees with witness O'Donnell include: (1) witness O'Donnell's interpretation of capital market conditions; (2) witness O'Donnell's proxy group selection; (3) witness O'Donnell's consideration of growth rates other than the expected EPS rate for his DCF analysis; (4) witness O'Donnell's use and miscalculation of the sustainable growth rate; (5) the applicability of the CEM; (6) witness O'Donnell's application of the CPAM; and (7) witness O'Donnell's failure to reflect flotation costs.

Witness D'Ascendis' rebuttal testimony also took issue with witness Phillips' use of average authorized return data and his testimony concerning cost recovery mechanisms. With respect to witness Phillips' testimony concerning Piedmont's cost recovery mechanisms, witness D'Ascendis observed that ten of the 11 companies in witness Hinton's proxy group have a capital investment rider and ten of his 11 proxy group companies have a decoupling mechanism in at least one of their jurisdictions.

In sum, witness D'Ascendis testifies that his recommended cost of common equity of 10.25% is both reasonable and conservative and would provide Piedmont with sufficient earnings to attract necessary capital efficiently and at a reasonable cost to the benefit of both customers and investors. Witness D'Ascendis contends that none of the arguments advanced by witnesses Hinton, O'Donnell, and Phillips should persuade the Commission to lower the return on equity below 10.25%.

#### *Stipulation*

In the Stipulation, Piedmont, the Public Staff, CUCA, and CIGFUR IV agree that the appropriate overall rate of return and rate of return on equity for use in this proceeding are 6.90% and 9.60% respectively, and the Stipulation represents substantial movement from these parties' original positions. The stipulated overall return of 6.90% and return on equity of 9.60% are supported by settlement testimony filed by Public Staff witness Hinton and Piedmont witness D'Ascendis. Further, the overall reasonableness of the stipulated rates of return is also addressed by Piedmont witness Powers in her settlement testimony.

#### *Settlement Testimony of John R. Hinton (Public Staff)*

Public Staff witness Hinton's settlement testimony states that the Stipulating Parties agree to an overall rate of return on investment of 6.90%, which included a return on equity of 9.60% and the long-and-short-term debt rates he recommended in his direct testimony. After noting that settlements often contain compromises from the various parties' litigation positions, and that the Stipulation was no different, witness Hinton opines that the stipulated rate of return on equity of 9.60% is reasonable. In this regard, he notes that the stipulated rate of return on equity falls within his range of estimated cost rates for common equity of 9.10% to 9.73%, at the lower end of Piedmont's unadjusted range of 9.59% and 12.72%, and slightly below Piedmont's adjusted range of 9.70% to 12.83%. As such, witness Hinton states that the stipulated rate of return on equity, and the entire stipulated capital structure, represents a reasonable middle ground between the original positions of Public Staff and Piedmont.

### *Settlement Testimony of Dylan W. D'Ascendis (Piedmont)*

Piedmont witness D'Ascendis' settlement testimony supports the stipulated rate of return on equity of 9.60%. He states that although the stipulated 9.60% rate of return on equity is somewhat below the lower bound of his initial recommended range, he understands that the Stipulation reflects negotiations among the Stipulating Parties regarding multiple issues and notes that the stipulated rate of return on equity generally is within the ranges of analytical results presented in his direct and rebuttal testimonies.

Witness D'Ascendis also testifies that it remains his position that in a fully litigated proceeding, a range of 9.70% to 12.83% represents an appropriate and defensible range for Piedmont's cost of equity. Nonetheless, he recognizes the benefits associated with Piedmont's decision to enter into the Stipulation. On balance, witness D'Ascendis believes that the stipulated rate of return on equity is a reasonable resolution of a complex and frequently contentious issue.

### *Public Witness Testimony/Statement of Consumer Position*

In addition to the direct prefiled testimony of the expert witnesses for the parties, a number of public witnesses also gave testimony suggesting that Piedmont customers would experience difficulty paying the increased rates requested in the Petition and opposing the rate increases proposed by Piedmont.

### **Law Governing the Commission's Decision on ROE**

The issue of the authorized rate of return on equity is often one of the most contentious issues to be addressed in a rate case, even in a case such as this one in which a Stipulation between Piedmont, the Public Staff, CUCA, and CIGFUR IV has been reached. In the absence of a settlement agreed to by all the parties, the law of North Carolina requires the Commission to exercise its independent judgment and arrive at its own independent conclusion as to the proper rate of return on common equity. *See, e.g., State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n*, 348 N.C. 452, 466, 500 S.E.2d 693, 707 (1998) (*CUCA I*).<sup>8</sup> In order to reach an appropriate independent conclusion regarding the rate of return on equity, the Commission must evaluate the available evidence, particularly that presented by conflicting expert witnesses. *State ex rel. Utils. Comm'n v. Cooper*, 366 N.C. 484, 491-93, 739 S.E.2d 541, 546-47 (2013) (*Cooper I*).

The baseline for establishment of an appropriate rate of return on common equity is the constitutional constraints established by the decisions of the United States Supreme Court in *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262

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<sup>8</sup> The Commission would note that even though the Stipulation is not unanimous among all parties to this proceeding, no parties have indicated opposition to the settlement reflected in the Stipulation and it is, therefore, technically uncontested. Notwithstanding this fact, the Commission will treat the Stipulation in this docket as among less than all parties.

U.S. 679 (1923) (*Bluefield*), and *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (*Hope*) which establish that:

To fix rates that do not allow a utility to recover its costs, including the cost of equity capital, would be an unconstitutional taking. In assessing the impact of changing economic conditions on customers in setting an ROE [rate of return on equity], the Commission must still provide the public utility with the opportunity, by sound management, to (1) produce a fair profit for its shareholders, in view of current economic conditions, (2) maintain its facilities and service, and (3) compete in the marketplace for capital.

Order Accepting Stipulation, Deciding Contested Issues, and Requiring Revenue Reduction, Docket No. E-7, Sub 1146, 50 (June 22, 2018). See also *State ex rel. Utils. Comm'n v. General Tel. Co. of the Southeast*, 281 N.C. 318, 370, 189 S.E.2d 705, 738 (1972) (*General Telephone*). As the North Carolina Supreme Court held in *General Telephone*, these factors constitute “the test of a fair rate of return declared” in *Bluefield* and *Hope. Id.*

The rate of return on equity is, in fact, a cost. The return that equity investors require represents the cost to the utility of equity capital: “[T]he cost of capital to the utility is synonymous with the investor’s return, and the cost of capital is the earnings which must be generated by the investment of that capital in order to pay its price, that is, in order to meet the investor’s required rate of return.” Roger A. Morin, *Utilities’ Cost of Capital*, 19-21 (Public Utilities Reports, Inc., 1984). “The term ‘cost of capital’ may [also] be defined as the annual percentage that a utility must receive to maintain its credit, to pay a return to the owners of the enterprise, and to ensure the attraction of capital in amounts adequate to meet future needs.” Charles F. Phillips, Jr., *The Regulation of Public Utilities*, 388 (Public Utilities Reports, Inc., 3d ed.1993).

Long-standing decisions of the North Carolina Supreme Court have recognized that the Commission’s subjective judgment is a necessary part of determining the authorized ROE. *State ex rel. Utils Comm’n v. Public Staff-N.C. Utils. Comm’n*, 323 N.C. 481, 490, 374 S.E.2d 361, 369 (1988) (*Public Staff*). Likewise, the Commission has observed as much in exercising its duty to determine the ROE, noting that such determination is not made by application of any one simple mathematical formula:

Throughout all of its decisions, the [United States] Supreme Court has formulated no specific rules for determining a fair rate of return, but it has enumerated a number of guidelines. The Court has made it clear that confiscation of property must be avoided, that no one rate can be considered fair at all times and that regulation does not guarantee a fair return. The Court also has consistently stated that a necessary prerequisite for profitable operations is efficient and economical management. Beyond this is a list of several factors the commissions are supposed to consider in making their decisions, but no weights have been assigned.

The relevant economic criteria enunciated by the Court are three: financial integrity, capital attraction and comparable earnings. Stated another way, the rate of return allowed a public utility should be high enough: (1) to maintain the financial integrity of the enterprise, (2) to enable the utility to attract the new capital it needs to serve the public, and (3) to provide a return on common equity that is commensurate with returns on investments in other enterprises of corresponding risk. These three economic criteria are interrelated and have been used widely for many years by regulatory commissions throughout the country in determining the rate of return allowed public utilities.

In reality, the concept of a fair rate of return represents a “zone of reasonableness.” As explained by the Pennsylvania commission:

There is a range of reasonableness within which earnings may properly fluctuate and still be deemed just and reasonable and not excessive or extortionate. It is bounded at one level by investor interest against confiscation and the need for averting any threat to the security for the capital embarked upon the enterprise. At the other level it is bounded by consumer interest against excessive and unreasonable charges for service.

As long as the allowed return falls within this zone, therefore, it is just and reasonable . . . It is the task of the commissions to translate these generalizations into quantitative terms.

Order Granting General Rate Increase, Docket No. E-2, Sub 1023, 35-36 (May 30, 2013) (2013 DEP Rate Order), citing to Charles F. Phillips, Jr., *The Regulation of Public Utilities*, 382 (Public Utilities Reports, Inc., 3d ed.1993).

Moreover, in setting rates the Commission must not only adhere to the dictates of both the United States and North Carolina Constitutions, but as has been held by the North Carolina Supreme Court, it must set rates as low as possible consistent with constitutional law. *Public Staff*, 323 N.C. at 490. Further, the North Carolina General Assembly has provided that the Commission must also set rates employing a multi-element formula set forth in N.C.G.S. § 62-133. The formula requires consideration of elements beyond just the ROE element, and it inherently necessitates that the Commission make many subjective determinations, in addition to the subjectivity required to determine the ROE. The subjective decisions the Commission must make as to each of the elements of the formula can and often do have multiple and varied impacts on all of the other elements of the formula. In other words, the formula elements are intertwined and often interdependent in their impact to the setting of just and reasonable rates.

The fixing of a rate of return on the cost of property used and useful to the provision of service (as determined through the end of the historic 12-month test period prior to the



proposed effective date of a requested change in rates and adjusted for proven changes occurring up to the close of the expert witness hearing) is but one of several interdependent elements of the statutory formula to be used in setting just and reasonable rates. See N.C.G.S. § 62-133. N.C.G.S. § 62-133(b)(4) provides, in pertinent part, that the Commission shall:

Fix such rate of return on the cost of the property . . . as will enable the public utility by sound management [1] to produce a fair return for its *shareholders, considering changing economic conditions and other factors* . . . [2] to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and [3] to compete in the market for capital funds on terms that are reasonable and that are fair to its customers and to its existing investors.

(Emphasis added.) The North Carolina Supreme Court has interpreted the above-emphasized language as requiring the Commission to make findings regarding the impact of changing economic conditions on customers when determining the proper ROE for a public utility. *Cooper I*, 366 N.C. at 495. The Commission must exercise its subjective judgment so as to balance two competing ROE-related factors — the economic conditions facing Piedmont’s customers and Piedmont’s need to attract equity financing on reasonable terms in order to continue providing safe and reliable service. 2013 DEP Rate Order at 35-36. The Commission’s determination in setting rates pursuant to N.C.G.S. § 62-133, which includes the fixing of the ROE, always takes into account affordability of public utility service to the using and consuming public. The impact of changing economic conditions on customers is embedded in the analyses conducted by the expert witnesses on ROE, as the various economic models widely used and accepted in utility regulatory rate-setting proceedings take into account such economic conditions. 2013 DEP Rate Order at 38. Further,

[t]he Commission always places primary emphasis on consumers’ ability to pay where economic conditions are difficult. By the same token, it places the same emphasis on consumers’ ability to pay when economic conditions are favorable as when the unemployment rate is low. Always there are customers facing difficulty in paying utility bills. The Commission does not grant higher rates of return on common equity when the general body of ratepayers is in a better position to pay than at other times . . .

*Id.* at 37. Economic conditions existing during the modified test year, at the time of the public hearings, and at the date of the issuance of the Commission’s order setting rates will affect not only the ability of the utility’s customers to pay rates but also the ability of the utility to earn the authorized rate of return during the period the new rates will be in effect. However, in setting the ROE, just as the Commission must assess the impact of economic conditions on customers’ ability to pay for service, it likewise must assess the effect of regulatory lag on Piedmont’s ability to access capital on reasonable terms. The Commission sets the ROE considering both of these impacts taken together in its ultimate decision fixing a utility’s rates.

Thus, in summary and in accordance with the applicable law, the Commission's duty under N.C.G.S. § 62-133 is to set rates as low as reasonably possible to the benefit of the customers without impairing Piedmont's ability to attract the capital needed to provide safe and reliable electric service and recover its cost of providing service.

### **Discussion and Application of Law to the Facts**

The Commission has examined Piedmont's Petition and supporting testimony and exhibits and Form G-1 filings seeking to justify its requested increase. Piedmont's updated request prior to entering into the Stipulation was a retail revenue increase of \$96.9 million in annual revenues. The Public Staff, which in this docket represents all users and consumers of Piedmont's natural gas service, Piedmont, CUCA, and CIGFUR IV entered into a Stipulation that results in reducing the retail revenue increase sought by Piedmont. As with all settlement agreements, each party to the Stipulation gained some benefits that it deemed important and gave some concessions for those benefits. Based on Piedmont's Petition, it is apparent that the Stipulation ties the 9.60% rate of return on equity to substantial agreed upon concessions made by Piedmont. As noted above, since the AGO, DEC, Nucor, and FPWC, all parties in this docket, did not participate in the Stipulation, the Commission is required to examine the Stipulation and exercise its independent judgment to arrive at its own independent conclusion as to the proper rate of return on common equity.

The starting point for an examination of what constitutes a reasonable rate of return on equity begins with the various economic and financial analyses provided by the parties' expert witnesses. In this proceeding, those analyses were provided in the testimonies of four different witnesses: Piedmont witness D'Ascendis, Public Staff witness Hinton, CUCA witness O'Donnell, and CIGFUR IV witness Phillips. These testimonies, as summarized above, provide a relatively broad range of methods, inputs, and recommendations regarding the proper rate of return on equity determination for Piedmont. For example, witness D'Ascendis relies in his direct testimony on three different analyses to arrive at his rate of return on equity recommendation. These analyses were a DCF analysis, a RPM analysis, and a CAPM analysis. By way of comparison, witness Hinton, used a DCF analysis and a regression analysis of allowed returns for natural gas LDCs to reach his conclusions and Comparable Earnings analysis to check those results. Witness O'Donnell, in turn, performed a DCF analysis, a Comparable Earnings analysis, and a CAPM analysis. Witness Phillips looked at the average allowed rate of return on equity for natural gas LDCs for the twelve months ending March 31, 2021, and recommended that as a cap to the allowed rate of return on equity.

These varying analyses, as is typical, produce varying results. Witness D'Ascendis' analyses presented in his direct testimony prompted him to propose a rate of return on equity range of 9.58% to 12.30% with a specific rate of return on equity recommendation of 10.25%. Witness Hinton indicates that his DCF analysis yielded a rate of return on equity range of 9.10% to 9.73% but that his regression analysis supported a 9.50% rate of return on equity and that his ultimate recommended rate of return on equity was 9.42%. Witness O'Donnell's analyses produced a rate of return on

equity ranges of 7.50% to 9.50% under his DCF analysis, 9.00% to 10.00% under his Comparable Earnings analysis, and 6.0% to 8.0% under his CAPM analysis, with an ultimate recommendation of 9.0%. Finally, witness Phillips recommends a cap on rate of return on equity of 9.56%.

The Commission finds the cost of equity analyses helpful in reaching its conclusion on an appropriate rate of return on equity for Piedmont but notes that the ranges of the various analyses span a range from 6.0% to 12.30% and the specific rate of return on equity recommendations of the witnesses span a range from 9.0% on the low end to 10.25% on the high end.

The Commission finds the risk premium regression analysis and Comparable Earnings analysis of Public Staff witness Hinton, the DCF and RPM analysis of Piedmont witness D'Ascendis, the Comparable Earnings analyses of CUCA witness O'Donnell, and the Stipulation are credible, probative, and entitled to substantial weight.

Public Staff witness Hinton conducted an equity risk premium regression analysis analyzing the relationship between approved returns on equity for natural gas utilities and Moody's Bond Yields for A-rated utility bonds. He testifies that the differential between the two rates of return is indicative of the return investors require in order to compensate for the additional risk. The results of this regression analysis are shown on Hinton Exhibit 7 and produce a cost of equity of 9.50%, only ten basis points below the stipulated 9.60% rate of return on equity. Witness Hinton's Comparable Earnings analysis used as a check on his overall rate of return on equity recommendation reviewed the earned returns on equity for his proxy group of comparable natural gas utilities, and produced an average historical earned return of 10.0% and a median earned return of 9.5%. The Commission finds that witness Hinton's risk premium regression analysis and his Comparable Earning analysis are credible, probative, and entitled to substantial weight.

Piedmont witness D'Ascendis in his rebuttal testimony updated his DCF analysis. His updated DCF model results of 9.59% is shown on Schedule DWD-1R, page 3. The Commission finds witness D'Ascendis' constant growth DCF analyses mean and median rate of return on common equity results credible, probative, and entitled to substantial weight.

In his rebuttal testimony, Piedmont witness D'Ascendis updates his RPM analysis, as shown on Schedule DWD-1R, page 10. Using the current interest rates results in a rate of return on common equity of 10.25%. As previously stated, the Commission approves the use of current interest rates, rather than projected near-term or long-term interest rates. The Commission finds witness D'Ascendis' updated RPM analysis using current interest rates to be credible, probative, and entitled to substantial weight.

The Commission also concludes that the Comparable Earnings analysis by CUCA witness O'Donnell is credible, probative, and entitled to substantial weight. Witness O'Donnell testifies that the comparable earnings for his proxy group of natural gas utilities produced earned returns of 9.00% to 10.00% over the period 2019 through 2026

balancing historical and forecasted returns. The stipulated 9.60% rate of return on equity is well within that range.

The Commission has carefully evaluated the DCF analyses of witnesses Hinton, O'Donnell, and D'Ascendis. As shown on D'Ascendis Settlement Exhibit DWD-1, from 2017 through 2021, there were 144 natural gas utility decisions by public service commissions resulting in a mean and median approved rate of return on equity of 9.61% and 9.60%, respectively.

As shown on D'Ascendis Settlement Exhibit DWD-1, of the 144 cases decided during this period, 80 included authorized rates of return on equity of 9.60% or higher. Public Staff witness Hinton's DCF results were 9.10%, 9.73%, and 9.35% with an average of 9.39%. CUCA witness O'Donnell's DCF range was 7.50% to 9.50%. The Commission has historically evaluated DCF analyses in determining rates of return on equity in general rate cases. However, the DCF analyses by the two witnesses are below the mean allowed rate of return on equity of 9.61% in 2017 through 2021.

In summary, the Commission finds the stipulated ROE to be reasonable and appropriate, as well as supported by the substantial weight of the evidence presented. The Commission, of course, does not blindly follow ROE results allowed by other commissions. The Commission determines the appropriate ROE based upon the evidence and particular circumstances of each case. However, the Commission believes that the ROE trends and decisions by other regulatory authorities deserve some consideration, as (1) they provide a check or additional perspective on the case-specific circumstances, and (2) Piedmont must compete with other regulated utilities in the capital markets, meaning that an ROE significantly lower than that approved for other utilities of comparable risk would undermine Piedmont's ability to raise necessary capital, while an ROE significantly higher than other utilities of comparable risk would result in customers paying more than necessary. Both of those outcomes are undesirable and would result in unjust and unreasonable rates. The fact that the approved ROE falls within the range of recently approved ROEs for other natural gas distribution utilities lends additional support to the Commission's approval.

The record contains substantial evidence supporting the reasonableness of a rate of return on equity of 9.60%. The overall rate of return and allowed ROE underlying Piedmont's current rates are 7.14% and 9.70% respectively, which is higher than the stipulated overall and rate of return and ROE of 6.90% and 9.60%. Further, the stipulated rates of return on rate base are well below Piedmont's originally proposed rates of 7.27% and 10.25% respectively. Additionally, the stipulated ROE is equal to the lowest allowed ROE granted by the Commission to a major natural gas or electric utility in at least the last decade and is equal to or lower than any current allowed ROE in effect for such utilities in North Carolina. As such, the Commission concludes that 9.60% is within the "zone of reasonableness" that leading commentators and the North Carolina Supreme Court have indicated is presumptively just and reasonable. See *State ex rel. Utils. Comm'n v. Gen. Tel. Co. of the Southeast*, 285 N.C. 671, 681 (1974) (a "zone of

reasonableness extending over a few hundredths of one percent” exists within which the Commission may appropriately exercise its discretion in choosing a proper ROE).

As the Supreme Court made clear in *CUCA I* and *CUCA II*, the Commission should give full consideration to a nonunanimous stipulation itself, along with all evidence presented by other parties, in determining whether the stipulation’s provisions should be accepted. In this case, insofar as expert ROE testimony is concerned, both witness D’Ascendis and witness Hinton support an ROE at 9.60%. Further, the two other parties that provided testimony on ROE support the stipulated ROE of 9.6%. Thus, the Commission finds and concludes that the Stipulation, along with the expert testimony of witnesses D’Ascendis, Hinton, O’Donnell, and Phillips is credible evidence of the appropriate ROE and is entitled to substantial weight in the Commission’s ultimate determination of this issue.

In summary, the Commission concludes there is substantial evidence supporting the reasonableness of an ROE of 9.60%.

However, to meet its obligation in accord with the holding in *Cooper I*, the Commission will next address the impact of changing economic conditions on customers. In this case, all parties had the opportunity to present the Commission with evidence concerning changing economic conditions as they affect customers. The testimony of Piedmont witnesses D’Ascendis and Powers, which the Commission finds entitled to substantial weight, addresses changing economic conditions at some length. Witness D’Ascendis provides detailed data concerning changing economic conditions in North Carolina, as well as nationally, and concludes that the North Carolina-specific conditions are “highly correlated” with conditions in the broader nationwide economy. As such, witness D’Ascendis testifies that changing economic conditions, both nationally and specific to North Carolina, are reflected in his rate of return on equity estimates. Piedmont witness Powers’ direct testimony provides evidence of the improving overall state of the economy in North Carolina including growth and unemployment figures. She also indicates that the requested overall and allowed ROE were low by historical standards. Notwithstanding this evidence, witness Powers concedes that no matter how strong the economy, some of Piedmont’s customers would always struggle to pay their utility bills. Witness Powers also points out, however, that even with the rate increase proposed in the Stipulation, customer annual bills in the early years would compare favorably with annual bills from as much as a decade ago.

Based upon the general state of the economy, and after weighing and balancing factors affected by the changing economic conditions in making the subjective decisions required, the Commission concludes that the stipulated rate of return on equity of 9.60% will not cause undue hardship to customers even though some will struggle to pay the increased rates resulting from the Stipulation.

The many Commission-approved adjustments reduced the revenues to be recovered from customers and the return to be paid to equity investors. Some adjustments reduced the authorized rate of return on investment financed by equity

investors. These adjustments have the effect of reducing rates and providing rate stability to consumers (and return to equity investors) in recognition of the difficulty some consumers will have paying increased rates in the current economic environment. While the equity investor's cost was calculated by resort to a rate of return on equity of 9.60% instead of 10.25%, this is only one approved adjustment that reduced ratepayer responsibility and equity investor reward. Many other adjustments reduced the dollars that equity investors actually have the opportunity to receive. Therefore, nearly all of the adjustments reduce ratepayer responsibility and equity investor returns in compliance with the Commission's responsibility to establish rates as low as reasonably permissible without transgressing constitutional constraints, and thus, inure to the benefit of consumers' ability to pay their bills in this economic environment.

For example, to the extent the Commission made downward adjustments to rate base, disallowed test year expenses, increased test year revenues, or reduced the equity capital structure component, the Commission reduced the rates consumers will pay during the future period when rates will be in effect. Because the compensation owed to investors for investing in Piedmont's provision of service to consumers takes the form of return on investment, downward adjustments to rate base, disallowances of test year expenses, increases to test year revenues, or reduction in the equity capital structure component, will reduce investors' return on investment irrespective of the determination of rate of return on equity.

Considering the changing economic conditions and their effects on Piedmont's customers, the Commission recognizes the financial difficulty that an increase in Piedmont's rates may create for some of Piedmont's customers, especially low-income customers. As shown by the evidence, relatively small changes in the rate of return on equity have a substantial impact on a utility's base rates. Therefore, the Commission has carefully considered changing economic conditions and their effects on Piedmont's customers in reaching its decision regarding Piedmont's approved rate of return on equity.

The Commission also recognizes that Piedmont is in a significant construction mode and much of the associated investment is responsive to safety related regulatory requirements. The need to invest significant sums in safety improvements to serve its customers requires Piedmont to maintain its creditworthiness in order to compete for large sums of capital on reasonable terms. The Commission must weigh the impact of changing economic conditions on Piedmont's customers against the benefits that those customers derive from Piedmont's ability to provide safe, adequate, and reliable natural gas service. Safe, adequate, and reliable natural gas service is essential to the well-being of the people, businesses, institutions, and economy of North Carolina. Thus, the Commission finds and concludes that such capital investments by Piedmont provide significant benefits to all of Piedmont's customers.

The Commission concludes in the exercise of its independent judgment and discretion that a 9.60% rate of return on equity is supported by the evidence and should be adopted. The hereby approved rate of return on equity appropriately balances the benefits received by Piedmont's customers from Piedmont's provision of safe, adequate,

and reliable natural gas service in support of the well-being of the people, businesses, institutions, and economy of North Carolina (which benefits are symbiotically linked to Piedmont's ability to compete in the equity capital market to access capital on reasonable terms that will be fair to ratepayers) with the difficulties that some of Piedmont's customers will experience in paying Piedmont's adjusted rates. The Commission further concludes that a 9.60% rate of return on equity will allow Piedmont to compete in the market for equity capital, providing a fair return on investment to its investor-owners, and lowering the rate from the requested 10.25% to 9.60% has the effect of reducing the cost of service which forms the basis the rates paid by ratepayers. Accordingly, the Commission concludes, taking into account changing economic conditions and their impact on customers that the approved rate of return on equity will result in the lowest rates constitutionally permissible in this proceeding.

Finally, in approving the 9.60% rate of return on equity, the Commission gives significant weight to the Stipulation and the benefits that it provides to Piedmont's customers, which the Commission is obliged to consider as an independent piece of evidence under the Supreme Court's holding in *CUCA I*.

As a result, the Commission concludes that the 9.60% stipulated ROE is reasonable, appropriate, and supported by the greater weight of the substantial evidence in the record.

**EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 31**

The evidence supporting this finding of fact and conclusion is contained in Piedmont's Petition, the direct testimony and rebuttal testimony and exhibits of Piedmont witness Couzens, and the Stipulation.

Section III.B.1 and Exhibit C3 to the Stipulation set forth the agreed throughput volumes established by the Stipulating Parties. The level of adjusted sales and transportation volumes used in the Stipulation is 135,394,767 dts. Total throughput, including electric generation and special contract quantities, is 422,497,539 dts. The sales and transportation throughput volume level is derived as follows:

Sales	72,624,021
Transportation	<u>62,770,746</u>
Total Sales and Transportation	135,394,767

These volume levels are the result of negotiations among the Stipulating Parties and are not opposed by any party. No other party submitted evidence on Piedmont's throughput.

The Commission has carefully reviewed the evidence regarding the appropriate throughput level in this docket and concludes that the stipulated throughput levels, which include total gas sales and transportation quantities plus electric generation and other special contract quantities, are fair, reasonable, and should be approved.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 32-34

The evidence for these findings of fact and conclusions is contained in Piedmont's Petition, the direct, supplemental, and settlement testimony and exhibits of Piedmont witness Couzens, the direct testimony and exhibits of Public Staff witness Patel, and the Stipulation.

The appropriate level for the total cost of gas for use in this proceeding is \$370,632,970 as determined by Section III.C.2 of the Stipulation and reflected in Exhibits A1, A2, and A3 to the Stipulation. The Stipulation is the result of negotiations among the Stipulating Parties in this docket and reflects the encompassing commodity gas costs and fixed gas costs as follows:

Commodity Costs <sup>9</sup>	\$244,251,008
Fixed Costs	<u>\$126,381,962</u>
Total Cost of Gas	\$370,632,970

The stipulated cost of gas is not contested by any party to this proceeding. The Commission has carefully reviewed these amounts, as well as all record evidence relating to the total cost of gas for use in this proceeding, and concludes that the stipulated cost of gas is reasonable and appropriate for use in this docket.

Under the Commission's procedures for truing-up fixed gas costs in proceedings under Commission Rule R1-17(k), it is necessary and appropriate to determine the amount of fixed gas costs that are embedded in the rates approved herein. In Section III.G to the Stipulation, the Stipulating Parties agree that for the purpose of this proceeding and future proceedings under Commission Rule R1-17(k) during the effective period of rates approved in this proceeding, the appropriate amount of fixed gas costs to be allocated to each rate schedule is as set forth in Exhibit D to the Stipulation. No party contests this allocation and no other party submitted evidence supporting a different allocation.

The Commission has carefully examined these amounts, as well as all record evidence on fixed gas cost allocations, and concludes that the stipulated allocations of fixed gas costs are fair and reasonable.

Under the Commission's procedures for establishing rates and truing-up commodity gas costs, it is necessary to establish a Benchmark embedded in sales customer rates. Section III.C.1 of the Stipulation provides that in establishing rates for this proceeding, the Stipulating Parties agree to a Benchmark of \$3.25 per dt. No party contests the use of a \$3.25 per dt Benchmark in establishing rates for this proceeding and no other party submitted evidence on this issue. The Commission has carefully examined this proposal and concludes that the use of a \$3.25 per dt Benchmark for purposes of establishing rates in this proceeding is fair and reasonable subject to

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<sup>9</sup> Of this total amount of commodity cost of gas, \$6,363,793 is the commodity cost of gas for company use and lost and unaccounted for gas quantities.



adjustment for the interim Benchmark change approved by the Commission in Docket No. G-9, Sub 792.

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 35**

The evidence for this finding of fact and conclusions is set forth in the direct testimony and exhibits of Piedmont witnesses Couzens and Menhorn, the direct testimony of Public Staff witness Floyd, the direct testimony of CUCA witness O'Donnell, the direct testimony of CIGFUR IV witness Phillips, the Stipulation, and the settlement testimony of Piedmont witness Couzens.

Piedmont witnesses Couzens and Menhorn, in their direct testimonies, indicate that Piedmont's initial proposal on cost allocation and rate design was to preserve the basic rate structure approved in Piedmont's last rate case but to spread any increase in costs across rate classes on a proportional basis and to include those additional costs in the revised volumetric rate component of Piedmont's rates. Witness Menhorn's direct testimony indicates that this approach would result in varying rates of return on rate base by Piedmont's various customer classes ranging from a high of 34.24% for large interruptible sales to a low of negative 1.78% for military transportation.

Public Staff witness Floyd's direct testimony states that due to constraints on time and resources, he was unable to complete a thorough review of Piedmont's rate design. Witness Floyd testifies that it was appropriate to conduct a deeper investigation into Piedmont's revenue apportionment and rate design given the disparities in class rates of return, the need to more fully understand Piedmont's calculations and applications of some of the allocation factors, and the degree to which interruptible customers and contract-related customers share in the recovery of fixed costs. Witness Floyd explains that Public Staff intended to work with Piedmont to gain a better understanding of the cost of service and revenue apportionment prior to Piedmont's next general rate case filing.

CUCA witness O'Donnell took issue with Piedmont's proposed rate design in his direct testimony and discusses the relative impacts of utilizing a peak and average cost allocation methodology versus a peak day allocation approach in conducting cost of service studies for Piedmont's proposed rate increase. Based on his analysis of the propriety of use and results of each of these two allocation methodologies, witness O'Donnell contends that a proportional allocation of the proposed rate increase would lead to unreasonable cost of service study rates of return for Interruptible Sales Service (Rate Schedule 104) and Interruptible Transportation Service (Rate Schedule 114) customers.

CIGFUR IV witness Phillips' direct testimony provides an extensive critique of Piedmont's proposed rate structure. This critique included pointing out several factors which witness Phillips testified indicated flaws in Piedmont's original proposed rate design. These factors included, among others: (1) the assertion that Piedmont's rates should be based on cost of service and that the proposed rate structure was not based on the cost of service; (2) the observation that even according to Piedmont the disparity between the respective customer class rates of return produced by Piedmont's

proportional rate increase proposal were large; and (3) the assertion that rates for large interruptible customers should be decreased rather than increased.

In Section III.F of the Stipulation, the Stipulating Parties agree to rates and allocations of the stipulated revenue requirement to Piedmont's customer classes that are acceptable to all the Stipulating Parties, which included all the parties who filed rate design or cost allocation testimony in this docket. Those rates and allocated revenue responsibilities, subject to any adjustments to rate base made pursuant to procedures outlined in Sections III.D.1 and III.D.2 of the Stipulation, are reflected in Exhibits C1 and C2 to the Stipulation. In Section III.X of the Stipulation, which is supported by the supplemental testimony of Piedmont witness Powers, the Stipulating Parties agree that the rates reflected on Exhibit C3 are comprised of the rate elements reflected on Exhibit K3. Exhibit J3 to the Stipulation sets out the relative impact on Piedmont's various customer classes of the stipulated cost allocation and rate design.

Witness Couzens' settlement testimony explains that the stipulated rates and rate design were the result of give and take negotiations between the Stipulating Parties and, ultimately, were acceptable to each of the Stipulating Parties. Witness Couzens further testifies that the stipulated rates design, which reflects the stipulated, reduced revenue requirement, is more beneficial to Piedmont customers than Piedmont's initially proposed rates in this proceeding.

Based on the totality of the evidence in this proceeding, including the substantial evidence supporting a reallocation of costs away from large general customers reflected in the testimony of CUCA witness O'Donnell and CIGFUR IV witness Phillips, as well as the Stipulation, and in the absence of other credible evidence on this issue, the Commission, based upon its own independent judgment, finds that the stipulated rate design reflected in the Supplemental Settlement Exhibits of Witness Powers' Supplemental Settlement Testimony filed on October 18, 2021, is just, reasonable, and appropriate for use in this proceeding.

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 36**

The evidence supporting this finding of fact and conclusions is contained in the Petition, the direct testimony and exhibits of Piedmont witness Weisker, the direct and settlement testimony of Piedmont witness Powers, the direct testimony of Public Staff witness Patel, the direct testimony of CIGFUR IV witness Phillips, and the Stipulation.

In its Petition, Piedmont indicates that it was incurring substantial and ongoing capital investments associated with efforts to comply with federal pipeline safety and integrity management requirements. In order to facilitate Piedmont's continued compliance with transmission and distribution integrity regulations issued by federal authorities, and as authorized by N.C.G.S. § 62-133.7A, Piedmont proposes to continue Piedmont's IMR mechanism in its tariffs. According to Piedmont, the IMR mechanism has been highly effective in facilitating compliance with the Pipeline and Hazardous Materials Safety Administration's (PHMSA) federal pipeline safety and integrity regulations.

Piedmont's witness Weisker's direct testimony and exhibits discuss the requirements of federal pipeline safety and integrity regulations and demonstrate Piedmont's incurred and projected costs associated with complying with those regulations as well as for major system enhancements needed to provide reliable service to Piedmont's growing customer base. Witness Weisker explains that since Piedmont's last general rate case and through the end of the test period for this rate case (*i.e.*, June 30, 2019, through December 31, 2020), Piedmont spent more than \$396 million on a variety of projects to ensure that Piedmont remains in compliance with PHMSA's regulatory requirements. Witness Weisker also testifies that Piedmont estimates that an additional \$137 million will be needed to complete capital projects during the six months ending June 30, 2021, and that the ongoing level of integrity management capital investment is expected to vary between approximately \$188 million and \$417 million per year over the next three years.

In her direct testimony, witness Powers testifies about the public benefits inherent in the continued operation of Piedmont's IMR mechanism and discusses how Piedmont expects to continue to experience significant amounts of capital investment related to PHMSA compliance. Witness Powers also testifies as to Piedmont's proposal to modify Appendix E to Piedmont's Service Regulations to include updated percentages and throughput in the calculation of Piedmont's annual Integrity Management Revenue Requirement (IMRR).

Public Staff witness Patel's direct testimony recommends that Piedmont's IMR mechanism remain in place given the importance of pipeline safety in complying with federal safety guidelines to protect Piedmont's customers, employees, contractors, and the general public.

Finally, CIGFUR IV witness Phillips notes in his direct testimony that Special Contract customers are not directly included in Piedmont's IMR mechanism but provide a credit to the IMR. Witness Phillips testifies that there is no showing of the adequacy of this credit and, as such, recommended that the IMR be borne by all customers.

As discussed in Section III.H of the Stipulation, and as authorized by N.C.G.S. § 62-133.7A, the Stipulating Parties agree that it is appropriate to continue Piedmont's IMR mechanism in the form attached as Appendix E to Piedmont's current North Carolina Service Regulations and attached as Exhibit F to the Stipulation.

The Commission has carefully considered the evidence in this proceeding related to the continuation of Piedmont's IMR mechanism and has reached the following conclusions. First, the Commission concludes that the form of IMR mechanism attached as Exhibit F to the Stipulation is consistent with N.C.G.S. § 62-133.7A, which authorizes the Commission to adopt "a rate adjustment mechanism to enable Piedmont to recover the prudently incurred capital investment and associated costs of complying with federal gas pipeline safety requirements, including a return based on Piedmont's then authorized return." In this case, the proposed form of IMR attached to the Stipulation provides for the recovery of return, taxes, and depreciation on capital investment associated with federal gas pipeline safety requirements in a manner consistent with the statute and in the same

fundamental manner that Piedmont is permitted to recover those items of its cost of service in a general rate case proceeding. This approach to IMR cost recovery is reasonable and consistent with statutory requirements and normal regulatory practices.

Second, the Commission concludes that continuation of the IMR mechanism is favorable to customers because it provides for biannual adjustments to rates rather than subjecting customers to frequent rate cases associated with Piedmont's recovery of the costs of investment to comply with federal safety and integrity requirements. Further, according to Exhibit F of the Stipulation, Appendix E – Integrity Management Rider, the IMR mechanism expressly provides for Commission review of the mechanism at the earlier of Piedmont's next general rate case proceeding or four years from the effectiveness of the mechanism and also specifically grants any party the right to petition the Commission to terminate or modify the mechanism at any time on the grounds that the rider mechanism, as approved by the Commission, is no longer in the public interest.

Third, consistent with the requirements of N.C.G.S. § 62-133.7A, the Commission finds the uncontested evidence of Piedmont's required capital expenditures on PHMSA compliance convincing. It is equally persuaded that regular and repeated general rate case proceedings, otherwise necessary to roll such investments into Piedmont's rate base, would be a detriment to Piedmont, its customers, and the Public Staff and would serve no purpose other than to increase regulatory costs paid by ratepayers and the regulatory burden on all parties who participate in Piedmont's general rate proceedings, including the Commission. The Commission is satisfied that the public interest is protected from any potentially adverse impacts through a variety of means, including the limited nature of the costs recoverable through the IMR mechanism, the special contract crediting provision contained therein, the mandatory and permissive review provisions contained in the rider, and the Commission's general and continuing oversight of Piedmont's earnings.

The Commission concludes that continuation of the stipulated IMR mechanism will promote public safety by supporting the timely recovery of costs associated with pipeline safety and integrity expenditures by Piedmont. The safety and reliability of utility infrastructure is of critical importance to the State and this Commission, and the IMR mechanism facilitates the accomplishment of that goal.

Based on the foregoing, and in the absence of any evidence to the contrary, the Commission finds the IMR mechanism attached as Exhibit F to the Stipulation to be fair, reasonable, in the public interest, and appropriate for adoption in this proceeding.

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 37**

The evidence for this finding of fact and conclusions is contained in Piedmont's Petition, the direct and supplemental testimony and exhibits of Piedmont witness Couzens, the direct testimony and exhibits of Public Staff witness Patel, and the Stipulation.

Under Piedmont's MDT mechanism, certain base and heat factors, as well as "R" values, are needed in order to make the calculations periodically required under that mechanism. These values are established and updated in general rate proceedings. Witness Patel states that she calculated the normalized usage for heat sensitive customers on a monthly basis and determined that the Public Staff's MDT revenue adjustments and that Piedmont's adjustments and the "R" factors are similar. Witness Patel states that this adjustment results in an increase to Residential, Small General Service, and Medium General Service total pro forma revenues. The Stipulating Parties provide updated factors in this proceeding as reflected in Section III.I and Exhibit E3 of the Stipulation. These values are not contested, and no other party has offered evidence supporting other factors. Based on the Stipulation, and the other record evidence in this proceeding, the Commission concludes that the updated MDT factors identified in Exhibit E3 to the Stipulation are reasonable and appropriate and should be approved.

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 38**

The evidence for this finding of fact and conclusion is contained in Piedmont's Petition, Piedmont witness Bowman's direct, supplemental, rebuttal testimony, and exhibits, Public Staff witness Feasel's direct testimony and exhibits, the Stipulation, Piedmont witness Powers' settlement testimony, and Public Staff witness Perry's settlement testimony.

Piedmont's Petition, which is supported by the direct testimony and exhibits of Piedmont witness Bowman, proposes to amortize and recover a number of previously deferred regulatory assets including certain PIM-D and PIM-T costs and certain environmental compliance costs. Witness Bowman testifies that Piedmont proposed amortization periods of four-years for recovery of these deferred costs. Later, via supplemental testimony, witness Bowman updated Piedmont's requested deferral amounts through June 30, 2021.

Public Staff witness Feasel's testimony addresses the level of costs to be recovered, the amortization period over which to allow recovery, the determination of the whether or not the deferred balance should be allowed in rate base for each deferred regulatory assets proposed, as well as the continued regulatory asset treatment for PIM-D, PIM-T, and certain environmental compliance assessment and clean-up costs. Witness Feasel recommends that it is appropriate to continue regulatory asset treatment for PIM-D and PIM-T costs and for environmental costs and to defer and treat such costs as a regulatory asset until the resolution of Piedmont's next general rate proceeding. However, witness Feasel's direct testimony includes an adjustment to Piedmont's deferred expenses to reflect Piedmont's absorption of twelve months of carrying costs.

Piedmont witness Bowman's rebuttal testimony addresses witness Feasel's proposed adjustments to Piedmont's deferred expenses. Witness Bowman testifies that she disagrees with witness Feasel's proposed reduction to working capital because this proposal was unjustified and contrary to the regulatory asset treatment of these deferred costs.

Section III.J of the Stipulation addresses Piedmont's deferred regulatory assets, proposed amortizations, and recovery for the following: (1) PIM-T O&M costs; (2) PIM-D O&M costs; (3) Eastern NCNG deferred O&M expenses; (4) environmental compliance assessment and clean-up O&M costs; and (5) under-collected regulatory fee payments.

Pursuant to the Stipulation, the PIM-T O&M costs subject to amortization over a four-year period, beginning November 1, 2021, are \$62,352,945 and represent the unrecovered costs accumulated by Piedmont through June 30, 2021, net of regulatory amortizations through October 31, 2021. The Stipulating Parties agree that it is also appropriate to continue regulatory asset treatment for PIM-T O&M costs and to defer and treat such costs as a regulatory asset until the resolution of Piedmont's next general rate proceeding. The PIM-D O&M costs subject to amortization over a four-year period, beginning November 1, 2021, are \$9,809,087 and represent actual expenses accumulated by Piedmont through June 30, 2021. The Stipulating Parties agree that it is also appropriate to continue regulatory asset treatment for PIM-D O&M costs and to defer and treat such costs as a regulatory asset until the resolution of Piedmont's next general rate proceeding. The Eastern NCNG deferred O&M expenses subject to amortization are the remaining balance of \$563,150 amortized over a four-year period, on a levelized basis that includes the accrual of interest at the stipulated net-of-tax overall rate of return, beginning on November 1, 2021. The Stipulating Parties also agree that it is appropriate to amortize and allow recovery of \$1,061,400 in environmental compliance assessment and clean-up costs over a four-year period, beginning November 1, 2021, which reflects actual deferred expenses through June 30, 2021, net of regulatory amortizations through October 31, 2021. The Stipulating Parties agree that it is also appropriate to continue regulatory asset treatment for these costs and to defer and treat environmental compliance assessment and clean-up costs as a regulatory asset until the resolution of Piedmont's next general rate proceeding. Finally, the Stipulating Parties agree that it is appropriate for Piedmont to amortize and collect over a four-year period, \$221,897 in under-collected regulatory fee payments made to the Commission as of June 30, 2021, beginning on November 1, 2021.

The Stipulating Parties support the amortization periods set forth in Section III.J of the Stipulation. No party opposes the proposals contained in Section III.J of the Stipulation.

In her settlement testimony, witness Powers testifies to the revenue impact of the stipulated adjustments related to the amortization and recovery of these previously deferred regulatory assets, which in conjunction with the stipulated adjustment to deferred rate case expense yielded a downward adjustment to Piedmont's margin revenue requirement of approximately (\$0.2 million).

The Commission has carefully considered the proposed amortization periods and related matters set forth in Section III.J of the Stipulation, as well as all record evidence on the amortization of these regulatory assets and concludes that the stipulated amortization treatment and specified amortization periods are consistent with the Commission's prior treatment of similar costs and are otherwise fair and reasonable and should be approved. The Commission further finds that it is appropriate to continue regulatory asset treatment for PIM-D and PIM-T O&M costs and the environmental

compliance assessment and clean-up costs as a regulatory asset until the resolution of Piedmont's next general rate proceeding.

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 39**

The evidence for this finding of fact and conclusions is set forth in the direct testimony and exhibits of Public Staff witness Perry, the rebuttal testimony and exhibits of Piedmont witness Bowman, and the Stipulation.

In her direct testimony, Public Staff witness Perry proposes an adjustment to Piedmont's amortization of protected EDIT. Specifically, witness Perry testifies that she recalculated federal protected and unprotected EDIT using revised balances estimated at December 1, 2021, the estimated effective date of rates in this proceeding, and the remaining amortization periods approved in Piedmont's last rate case in Docket No. G-9, Sub 743.

In her rebuttal testimony, Piedmont witness Bowman acknowledges that Piedmont had recently realized that its Petition inadvertently represented the amortization of protected EDIT in base rates in a way that did not conform with IRS tax normalization requirements. Witness Bowman testifies that to comply with IRS tax normalization requirements, Piedmont's annual amortization expense of protected EDIT needs to be no greater than (\$2,795,775). Witness Bowman states that because Public Staff witness Perry's proposed amortization to protected EDIT is in excess of this amount, it should be rejected.

In the Stipulation, at Section III.T, the Stipulating Parties agree that the amortization of protected EDIT in the cost of service for the Stipulation should be updated using the current ARAM rate. No other party filed testimony as to the amortization of protected EDIT.

The Commission has carefully reviewed the evidence on these issues and believes that the amortization of protected EDIT, as reflected in Section III.T of the Stipulation, appropriately balances the interests of customers and Piedmont. As such, the Commission finds that the stipulated amortization of protected EDIT is just, reasonable, and appropriate for use in this proceeding.

### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 40**

The evidence for this finding of fact and conclusions is set forth in the direct testimony and exhibits of Piedmont witness Couzens, the direct testimony and exhibits of Public Staff witness Perry, the Stipulation, and the settlement testimony of Piedmont witness Powers.

In her direct testimony, Piedmont witness Couzens testifies that Piedmont was not proposing any changes to its existing EDIT Rider rates. Witness Couzens testifies that Piedmont's EDIT Rider mechanism was approved in Piedmont's last rate case in Docket

No. G-9, Sub 743, to administer the flowback to customers of deferrals and EDIT created by changes to the federal and state income tax rates. Witness Couzens states that pursuant to the Commission's order in Docket No. G-9, Sub 776, Piedmont removed the EDIT Rider rates for the one-year giveback of deferred revenues on December 1, 2020, with the completion of those refunds. As previously authorized, witness Couzens testifies that the EDIT Rider rates for the five-year giveback of federal unprotected EDIT and the rates for the three-year giveback of North Carolina state EDIT will continue refunding to customers as previously authorized until the end of the amortization periods. Witness Couzens testifies that the refunds associated with the EDIT Rider mechanism have been excluded from this proceeding.

In her direct testimony, Public Staff witness Perry recommends decreases to the revenue requirement associated with the refund of the remaining EDIT Riders updated based upon the Public Staff's recommended overall rate of return.

In Stipulation Section III.U, the Stipulating Parties agree that the federal unprotected EDIT and the state EDIT rider rates will be continued based on the remaining amortization periods approved in Piedmont's last rate case in Docket No. G-9, Sub 743 and updated based upon the overall rate of return provided in this Stipulation. Additionally, the Stipulating Parties agree that for rate design purposes, the EDIT Rider credits will be distributed to all tariffed rate schedules as approved in Piedmont's last rate case.

In her settlement testimony, Piedmont witness Powers states that the amortization periods for the federal unprotected EDIT Rider and state EDIT Rider have not yet concluded but are set to end on October 31, 2024, and October 31, 2022, respectively. Witness Powers explains that because Piedmont's approved overall rate of return was a component used in the calculation of the annual revenue requirement impact for each of these two EDIT Riders in Piedmont's last general rate case, and because the outcome of this rate case will modify Piedmont's approved overall rate of return, the Stipulation updates these two EDIT Riders over their remaining amortization periods for the effect of the stipulated overall rate of return. Witness Powers testifies that the total annual refund to customers for unprotected federal EDIT was updated to (\$25,562,970), which is a difference of (\$2,258,701) from the approved amount in Piedmont's last rate case. Additionally, witness Powers testifies that the total annual refund to customers for state EDIT was updated to (\$22,201,275), which is a difference of (\$1,466,121) from the approved amount in Piedmont's last rate case.

The Commission has carefully reviewed the evidence on these issues and believes that the EDIT Rider rates appropriately balance the interests of customers and Piedmont with respect to the flow back of these regulatory liabilities. The Commission finds that the EDIT Rider rates, as reflected in Exhibits L1 and L2 to the Stipulation, are just, reasonable, and appropriate for use in this proceeding.



## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 41

The evidence for this finding of fact and conclusion is set forth in the prefiled direct testimony of Piedmont witness Bowman, in Piedmont's immediately preceding rate case in Docket No. G-9, Sub 743, the direct testimony of Public Staff witness Perry, and in the Stipulation.

The depreciation rates currently in effect for Piedmont are from a depreciation study filed in Piedmont's last general rate case in Docket No. G-9, Sub 743, the results of which were incorporated into the settlement in Docket No. G-9, Sub 743, and which underlie Piedmont's existing rates. Piedmont adopted these depreciation rates effective November 1, 2019, as approved by the Commission in Docket No. G-9, Sub 743.

In its Petition, Piedmont did not present the results of a new depreciation study. As explained by Piedmont witness Bowman in her direct testimony, Piedmont instead relied on depreciation rates provided by the depreciation study filed in its last general rate case in Docket No. G-9, Sub 743. Witness Bowman explains that because the depreciation study filed in Docket No. G-9, Sub 743 is relatively recent, and because Piedmont is not aware of any factors that would render the study stale, it elected to rely upon them for purposes of this proceeding rather than burdening customers with the costs of conducting new studies.

In her direct testimony, Public Staff witness Perry made the following adjustments to Piedmont's depreciation expense: (1) corrected the various depreciation rates that were approved in the depreciation study included in Piedmont's rate case in Docket No. G-9, Sub 743; and (2) applied the approved rates to present an annualized amount of depreciation expense based on the actual plant in service as of May 31, 2021.

In Section III.V of the Stipulation, the Stipulating Parties agree that it is appropriate to continue to use the depreciation rates and reallocations of book reserves approved in Docket No. G-9, Sub 743 in this proceeding. The Stipulating Parties also agree that it is appropriate to reduce depreciation expense to reflect the impacts of the reallocation of the reserve accounts related to the North Carolina direct and corporate allocated general plant accounts.

No party contested the implementation of Piedmont's revised depreciation rates as proposed in the Stipulation and no other party submitted evidence on this issue.

The Commission concludes that implementation of the depreciation rates and book reserve reallocation as approved in Docket No. G-9, Sub 743, is just and reasonable, and appropriate for use in this proceeding. The Commission further concludes that the revised depreciation expense, as reflected in Section III.V of the Stipulation, is likewise just, reasonable, and appropriate for use in this proceeding.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 42

The evidence for this finding of fact and conclusion is contained in Piedmont's Energy Efficiency Application, Piedmont's Petition, the direct testimony of Piedmont witness Powers, the direct testimonies of Public Staff witnesses Singer, Williamson, and Perry, the Stipulation, the settlement testimony of Piedmont witness Powers, the settlement testimony of Public Staff witness Perry, and the post-hearing filings of the parties.

At present, the costs associated with the operation of Piedmont's EE programs for its North Carolina customers are recovered through its base rates. Piedmont currently operates the following three EE programs – the Residential Low-Income program, the Equipment Rebate program, and the School Conservation Education programs. In Piedmont's last rate case proceeding in Docket No. G-9, Sub 743, the Commission approved a cost of service for Piedmont that included \$1.275 million of expense for the operation of Piedmont's EE programs.

In its Energy Efficiency Application, Piedmont requests that the Commission: (1) modify its existing Equipment Rebate Program; and (2) approve the following three new EE programs: (a) Residential New Construction Program; (b) Commercial Food Services Program; and (c) Commercial HVAC & Water Heating Rebate Program. In its Petition, Piedmont also proposes to establish, as Appendix H to its North Carolina Service Regulations, a new rider mechanism to collect and recover the costs of all approved EE programs, to become effective November 1, 2021. In her direct testimony, witness Powers explains that Piedmont proposed to recover the ongoing expenses for operation of its EE programs through a rider instead of through base rates to account for the likely variability in the expected total annual expense. Tr. vol. 3, 325. Witness Powers further states:

Should [Piedmont's] EE Program Request be approved by the Commission, the annual expense of operating its suite of six Energy Efficiency Programs is expected to range from \$2.8 million to \$4.5 million per year during the next five years. Variability in the expected total annual expense is inherent to the process of ramping up new, incremental programs, setting up an evaluation, measurement[,] and verification plan for the programs, and considering uncertain customer demand for program incentives that is often experienced without a regular, predictable cadence.

Base rate recovery makes sense when there is a reasonable degree of certainty about the going level expense amount, which is often talked about in terms of being a known and measurable amount. With respect to [Piedmont's] Energy Efficiency Programs for its customers, there is a reasonable degree of certainty that there will be significant variability in the annual expense year over-year for the foreseeable future. Recovering the actual Energy Efficiency Program expenses through a rider mechanism in lieu of base rates supports [Piedmont's] continued, uninterrupted operation

of these customer programs and would ensure that the program expenses are ultimately neither over- nor under-recovered.

*Id.* at 325-26.

Additionally, as explained in the direct testimony of witness Powers, in the absence of Commission approval of Piedmont's proposed Appendix H, Piedmont requests approval for regulatory asset treatment for its EE program expenses.

In their direct testimonies, Public Staff witnesses Singer and Williamson recommend that the Commission: (1) approve Piedmont's modifications to the Equipment Rebate Program, renamed as the Residential HVAC & Water Heating Rebate Program; (2) approve Piedmont's new Residential New Construction Program, Commercial Food Services Program, and Commercial HVAC & Water Heating Rebate Program; (3) approve Piedmont's request to recover EE program cost rates through an EE rider; (4) approve Piedmont's entire portfolio of EE programs as pilot programs; (5) require Piedmont to conduct more rigorous evaluation, measurement, and verification (EM&V) of its EE programs during the pilot period; and (6) approve the EE pilot programs for a period of three years. Public Staff witness Perry also testifies that Public Staff did not oppose the implementation of Piedmont's proposed EE rider but notes that the structure of the EE rider remained under discussion.

In Section III.AA of the Stipulation, the Stipulating Parties agree to the authorization of the entire portfolio of Piedmont's new and modified EE programs for a three-year pilot program in order to collect operational data, perform EM&V, and assess cost-effectiveness. The Stipulating Parties agree that the three-year pilot program would begin within six months of the Commission's final order in this proceeding. The Stipulating Parties also agree that Piedmont should be allowed to recover the costs of the EE programs through an EE rider.

Witness Powers' settlement testimony filed on September 7, 2021, explains that while the Stipulating Parties agreed to remove the EE Program expenses from Piedmont's base revenue requirement and instead permit Piedmont to recover these costs through an EE rider mechanism, the Stipulating Parties had not reached agreement at that time on the details of how that cost recovery should precisely work.

Agreement on those details was subsequently reached by Piedmont and the Public Staff in the form of a filing made on September 27, 2021, setting forth those agreements. That filing was followed by a later joint filing of an agreed proposed EE Rider mechanism including proposed initial surcharge rates.

Finally, during the evidentiary hearing, the Commission further probed the basis for Piedmont's request for special ratemaking treatment of its existing and proposed EE program costs. In response to Commissioner questions, witness Powers testified that (1) Piedmont's proposed use of EE programs and rider cost recovery to encourage energy efficiency is reasonable, (2) that Piedmont's request to establish an EE rider is within the context of a general rate case, in which all rate schedules are under

consideration, (3) that the costs of the EE programs are uncertain and subject to fluctuate, (4) that the cost effectiveness of the EE programs would be subject to scrutiny via the pilot program mechanism, and (5) that a rider mechanism is an appropriate and well-recognized method for cost recovery for this type of program. *Id.* at 357-58. Witness Powers further testifies that Piedmont's integrity management rider, which the Commission approved in 2013, is analogous to Piedmont's proposed EE rider. *Id.* at 358-59.

No party contests the EE program or EE rider changes discussed above and no other party has submitted evidence supporting a different disposition of these issues.

Within the context of a general rate case pursuant to N.C.G.S. § 62-133, established precedent indicates that the Commission clearly possesses the authority to establish a cost-tracking rider if compelling circumstances exist to justify such action. Further, even in the absence of an express enabling statute,<sup>10</sup> the Commission has exercised this ratemaking tool and the Supreme Court of North Carolina has upheld the Commission's authority to establish a cost-tracking rider when exceptional circumstances, such as a national fuel crisis causing a utility's gas costs to fluctuate unpredictably, warrant such action. *See, e.g., State ex rel. Utils. Comm'n v. Edmisten*, 291 N.C. 327, 230 S.E.2d 651 (1976) (*Edmisten I*); *State ex rel. Utils. Comm'n v. Edmisten*, 291 N.C. 451, 232 S.E.2d 184 (1977) (*Edmisten II*).

In the past, the Commission has considered certain factors when giving consideration to the appropriateness of a rate rider mechanism created without express statutory authority: (1) Price fluctuations of an expensive item that could seriously impair the public utility to earn the return set by the Commission as reasonable and fair, (2) the reasonableness of the public utility's need for the item(s) at issue, (3) the actual cost of the item(s) exceed(s) the utility's projections, (4) the public utility's own diligence and reasonableness in its practices and procurement of the item(s), (5) causation between the price fluctuations and cost of the item(s) and the utility's inability to experience adequate earnings, (6) that a rider is an appropriate and well-recognized method for cost recovery of the particular item(s), (7) savings passed on to ratepayers as a result of improvements due to the procurement of the needed item(s). On appeal, the Court of Appeals upheld the Commission's approval of a fuel clause premised on these factors. *State ex rel. Utils. Comm'n v. Edmisten*, 26 N.C. App. 662, 217 S.E.2d 201 (1975).

The Commission has carefully reviewed the evidence on the issues surrounding Piedmont's request to recover its existing and proposed EE program costs through a rider and finds persuasive the testimony of witness Powers and the recommendations of Public Staff witnesses Singer and Williamson. The testimony of witness Powers particularly highlights that a number of the factors enumerated above are present, and the Commission

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<sup>10</sup> *See, e.g.,* Order Approving Partial Rate Increase and Allowing Integrity Management Rider, Docket No. G-9, Sub 631, 39 (Dec. 17, 2013) (approving an Integrity Management Rider as part of a general rate case decision); Order Approving Partial Rate Increase and Requiring Conservation Initiative, Docket No. G-9, Sub 499 (Nov. 3, 2005) (approving a Customer Utilization Tracker as part of a general rate case decision); Order Granting General Rate Increase and Approving Amended Stipulation, Docket No. E-7, Sub 909 (Dec. 7, 2009) (approving a Coal Inventory Rider as part of a general rate case decision).

finds those factors probative to Piedmont's request. The Commission further notes that DEC, Duke Energy Progress, LLC, and Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina, each recover the costs of their energy efficiency programs via a statutorily-authorized rider mechanism, making a rider an appropriate and well-recognized method for the cost recovery of programs designed to encourage energy efficiency.

In this case, the EE rider mechanism is designed to allow the Commission to track Piedmont's energy efficiency costs and the success of its programs, as well as provide incentive to Piedmont to promote energy efficiency and allow customers the opportunity to better manage their energy costs. In light of the Commission's policy to promote energy efficiency and to address concerns about affordability, the Commission finds it appropriate to allow a limited rider to be created for these pilot programs. Finally, the Commission notes the proposed EE rider is a limited-term pilot, which will allow the Commission to evaluate whether the tariff is successful in meeting its objectives.

Based on the evidence in this proceeding, the Commission concludes upon its own independent judgment that the EE program changes and EE rider mechanism reflected in Section III.AA of the Stipulation and subsequent filings in this proceeding are just, reasonable, and in the public interest.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 43**

The evidence for this finding of fact and conclusion is contained in the direct testimony of Public Staff witness Metz, and the Stipulation.

In his direct testimony, Public Staff Metz recommends that the Commission order Piedmont, the Public Staff, and any other interested parties, prior to the earlier of Piedmont's next general rate case or its 2023 Annual Review, to undertake, report on the status of, and complete a study of whether Piedmont's current method of allocating its transmission plant assets to North Carolina and South Carolina is fair to each state's customers in light of the fact that Piedmont plans for future supply and capacity resources based on a combination of both North Carolina and South Carolina demands. Witness Metz also recommends that the Commission order Piedmont, the Public Staff, and any other interested parties, prior to the earlier of Piedmont's next general rate case or its 2023 Annual Review, to initiate, report on the status of, and complete a study of an updated regression analysis to determine a more accurate breakdown of system usage among customer classes and the North Carolina and South Carolina jurisdictions.

In Section III.AB of the Stipulation, the Stipulating Parties adopt Public Staff witness Metz's recommendations to examine Piedmont's method for allocating transmission plant to ensure fairness to North Carolina and South Carolina customers before the earlier of Piedmont's next general rate case or 2023 Annual Review. The Stipulating Parties also agree to Public Staff witness Metz's suggestions to perform an updated regression analysis to determine a more accurate breakdown of system usage

among customer classes and the North Carolina and South Carolina jurisdictions before the earlier of Piedmont's next general rate case or 2023 Annual Review.

No party contests the proposed cost allocation study process discussed above and no other party has submitted evidence supporting a different disposition of these cost allocation issues.

Based upon the testimony of Public Staff witness Metz and the Stipulation, the Commission finds that the proposed study process reflected in Section III.AB of the Stipulation, is just, reasonable, and appropriate.

Finally, given the benefits that are afforded to Piedmont's South Carolina service territory by Piedmont's LNG plants sited in North Carolina, the Commission finds it is reasonable and appropriate to require that, prior to the earlier of Piedmont's next general rate case or its 2023 Annual Review, that Piedmont study the allocation of its LNG plant assets between North Carolina and South Carolina for the purpose of determining whether its current method is fair to each state's customers in light of the fact that Piedmont plans for future supply and capacity resources based on demand created by Piedmont's North Carolina and South Carolina service territories.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 44**

The evidence for this finding of fact and conclusion is contained in Piedmont's Petition, the direct testimony and exhibits of Piedmont witness Powers, and the Stipulation.

In her direct testimony, Piedmont witness Powers proposes various changes to Piedmont's rate schedules and Service Regulations. Specifically, witness Powers testifies that in addition to the proposed Appendix H to incorporate the EE rider, as discussed previously in this Order, Piedmont was proposing to eliminate Rate Schedules 12 and T-12 and make several minor corrective adjustments to a number of other provisions of its Tariff.

With regard to Piedmont's proposal to eliminate Rate Schedules 12 and T-12, Piedmont witness Powers testifies that no customers were provided or billed for service under either of these rate schedules during the test period, in several years prior to the test period, or in the time since the test period. Since no customers will be impacted by eliminating the service provided under these rate schedules, witness Powers states that Piedmont proposes to eliminate them.

In Section III.W of the Stipulation, and in Stipulation Exhibits G and H, the Stipulating Parties agree to adopt Piedmont's proposed tariff changes as described by witness Powers in her direct testimony, including Appendix E of the Stipulation.

No party contests the proposed tariff changes discussed above and no other party has submitted evidence supporting a different disposition of these proposed tariff changes.

Based upon the testimony of Piedmont witness Powers and the Stipulation, the Commission finds that the proposed rate schedule and service regulation changes reflected in Exhibits G and H to the Stipulation, including Appendix E, are just, reasonable, and appropriate.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 45**

The evidence for this finding of fact and conclusions is contained in the direct testimony of Public Staff witness Hinton, rebuttal testimony of Piedmont witness Couzens, and the Stipulation.

In his direct testimony, Public Staff witness Hinton recommends three revisions to Piedmont's gas extension feasibility model used to calculate the feasibility of extending natural gas service to Piedmont's residential and commercial customers. First, witness Hinton testifies that Piedmont's feasibility model should utilize an investment horizon of 40 years or an appropriate length of time that matches the book lives of the gas plant. Second, witness Hinton testifies that Piedmont's feasibility model should use Piedmont's approved net of tax discounted rate. Third, witness Hinton testifies that all future cash flows should be adjusted by a long-term inflation rate of 2%.

In her rebuttal testimony, witness Couzens testifies that Piedmont supported Public Staff witness Hinton's proposed changes and supports the adjustments.

Accordingly, Section III.Y of the Stipulation adopted witness Hinton's recommendations concerning Piedmont's gas extension feasibility model. Specifically, the Stipulating Parties agree to the following revisions to Piedmont's model used to calculate the feasibility of extending natural gas service to its residential and commercial customers: (1) use of an investment horizon of forty years or an appropriate length of time that matches the book lives of the gas plants; (2) use of Piedmont's approved net of tax overall rate of return as the discount rate employed for the net present value analysis approved in Piedmont's most recent rate case; and (3) adjustment of all future cash inflows by a long-term inflation rate of 2%.

No other party submitted evidence on this issue.

Based upon the testimony of Public Staff witness Hinton and the Stipulation, the Commission finds that the gas extension feasibility model, as reflected in Section III.Y to the Stipulation, is just, reasonable, and appropriate.

## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 46**

The evidence for this finding of fact and conclusions is contained in direct testimony of Public Staff witness Floyd, the Stipulation, and the settlement testimony of Piedmont witness Powers.

In his direct testimony, Public Staff witness Floyd testifies that the issue of affordability, as addressed by the Commission and other parties in electric proceedings in Docket Nos. E-7, Subs 1213, 1214, and 1187 and E-2, Subs 1219 and 1193 for various Duke electric utilities (Affordability Dockets), also existed in natural gas utility service. Therefore, witness Floyd testifies that either a similar stakeholder process be convened for natural gas utilities or Piedmont be allowed to join the Duke electric utilities' Affordability Dockets.

In Section III.Z of the Stipulation, the Stipulating Parties agree that the Commission should allow Piedmont to join and participate in the affordability stakeholder collaborative currently being conducted in the Affordability Dockets.

No other party submitted evidence on this issue.

Based upon the testimony of Public Staff witness Floyd and the Stipulation, the Commission finds that Piedmont's participation in the Affordability Dockets, as reflected in Section III.Z to the Stipulation, is just, reasonable, and appropriate.

## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 47**

The evidence for this finding of fact and conclusions is contained in the direct testimony of Public Staff witness Powers and the Stipulation.

In her direct testimony, witness Powers explains that the Line 434 Revenue Rider, approved in Piedmont's last rate case in Docket No. G-9, Sub 743, is no longer needed due to the cancellation of the Atlantic Coast Pipeline. As such, witness Powers requests that the Commission eliminate the Line 434 Rider and the requirement to make a filing to amend the initial rate of the Line 434 Rider from its initial rate of \$0.0000.

In Section III.X of the Stipulation, Piedmont and the Stipulating Parties agree to terminate the Line 434 Rider.

No other party submitted evidence on this issue.

The Commission has carefully reviewed the evidence on this issue and concludes that elimination of the Line 434 Rider is just, reasonable, and appropriate in this docket.



## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 48**

The evidence supporting this finding of fact is found in the verified Application and Form G-1, the testimony and exhibits of the witnesses, and the entire record in this proceeding.

In the present case, the Commission is approving Piedmont's recovery through amortization of certain deferred TIMP O&M costs (PIM-T), deferred DIMP O&M costs (PIM-D), Eastern NCNG deferred O&M expenses, deferred environmental compliance assessment and clean-up O&M costs, under-collected regulatory fee payments and rate case expenses. A deferred cost is an exception to the general principle that a regulated utility's current cost-of-service expenses should be recovered as part of its current revenues. As a result, a deferred cost is not the same as the other cost-of-service expenses to be recovered in the regulated utility's base rates and, therefore, should be subject to different accounting guidelines. When the Commission approves a typical cost of service, such as salaries and depreciation expense, there is a reasonable expectation that the expense will continue at essentially the same level until the regulated utility's next general rate case, at which time it will be reset. On the other hand, when the Commission approves a deferred cost, the Commission identifies a specific amount that has already been incurred by the regulated utility or is estimated to be incurred by the regulated utility. In addition, with respect to deferral of costs already incurred, the Commission sets the recovery of the amount of those costs over a specific period of time.

Therefore, the Commission finds it appropriate to direct Piedmont to record the recovery of the specific deferred costs in a regulatory asset account, rather than a general revenue account. If Piedmont continues to recover a deferred cost authorized by this order for a longer period of time than the amortization period approved by the Commission that does not mean that Piedmont is then entitled to convert those deferred costs into general revenue and record them in its general revenue accounts. Rather, Piedmont should continue to record all amounts recovered as deferred costs in the specific regulatory asset account established for those deferred costs until its next general rate case.

## **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 49**

The evidence for this finding of fact and conclusion is contained in the Stipulation, the settlement testimonies of Piedmont witnesses Couzens, D'Ascendis, and Powers, the supplemental testimony of Piedmont witness Long, the settlement testimonies of Public Staff witnesses Hinton and Perry, and in all of the testimony and exhibits in this proceeding.

As is fully discussed above, the provisions of the Stipulation are the product of give-and-take settlement negotiations between Piedmont, the Public Staff, CUCA, and CIGFUR IV. As a consequence, the Stipulation reflects the fact that each of the Stipulating Parties agree to certain provisions that advanced each such party's interests. The end result is that the Stipulation strikes a fair balance between the interests of each of the Stipulating Parties. Therefore, the Commission approves the Stipulation in its entirety.

## **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 50-56**

The evidence in support of these findings of fact is included in the comments, proposed orders, testimony, and exhibits of Piedmont witnesses Barkley and Sosnick, DEC witness Mitchell, and Public Staff witness Perry.

### **Summary of Procedural Background of Lincoln County Plant Contracts**

On July 26, 2004, in Docket No. G-9, Sub 491, Piedmont filed an application for approval of a multiyear Gas Redelivery Agreement (Original Agreement) between Piedmont and Duke Power, a Division of Duke Energy Corporation, the predecessor of DEC. In summary, the Original Agreement set the rates and terms by which Piedmont proposed to construct and operate gas transmission facilities (Original Facilities), and provide natural gas redelivery service to DEC's Lincoln County Combustion Turbine Facility (Lincoln Plant). The Original Agreement ultimately covered gas supply to 16 combustion turbines (CTs) at the Lincoln Plant. On September 3, 2004, the Commission issued an Order approving the Original Agreement.

On April 23, 2018, in Docket No. G-9, Sub 722, Piedmont filed an application pursuant to N.C.G.S. § 62-153(b) requesting approval of a Consolidated Natural Gas and Redelivery Services Agreement (Revised Agreement) between Piedmont and DEC. Piedmont stated that the Revised Agreement provided for the construction and operation of incremental natural gas transmission facilities (New Facilities) by Piedmont in order to provide natural gas redelivery service to one additional CT located at DEC's Lincoln Plant. Piedmont stated that the Revised Agreement consolidated, superseded, and expanded upon DEC's and Piedmont's rights and responsibilities under the Original Agreement for services at the Lincoln Plant.

During the Public Staff's review of the proposed Revised Agreement, the Public Staff raised several concerns with Piedmont, particularly with respect to the degree of system contribution provided by the proposed rates in the Revised Agreement.

On November 16, 2018, Piedmont filed a revised Consolidated Natural Gas Construction and Redelivery Services Agreement (Second Revised Agreement) between Piedmont and DEC. Piedmont stated that the Second Revised Agreement added a usage-based system support surcharge that was renegotiated with DEC to address the Public Staff's concerns related to system contributions by the New Facilities. Piedmont requested that the Second Revised Agreement be substituted in its entirety for the previously filed Revised Agreement and that the Commission approve the Second Revised Agreement at its earliest convenience.

On January 10, 2020, Piedmont filed a Request for Authorization to Commence Service. In summary, Piedmont requested that the Commission authorize it to commence incremental service to the Lincoln Plant effective February 1, 2020, on an interim basis, at the rates included in the Second Revised Agreement. According to Piedmont, the rates include a volumetric usage-based system support surcharge applicable to the New

Facilities that will be subject to retroactive adjustment pursuant to a final order by the Commission in the Sub 722 proceeding. Finally, Piedmont stated that the Public Staff did not object to the requested interim authority.

On January 28, 2020, the Commission issued an Order Granting Interim Authority to Operate Under Second Revised Agreement and Requiring Public Staff Action (First Interim Authority Order), authorizing Piedmont to commence service to DEC at the Lincoln Plant under the rates and other terms set forth in the Second Revised Agreement, with said interim authority being effective on February 1, 2020, and ending at midnight on April 30, 2020, unless extended by order of the Commission prior to its expiration. In response to subsequent motions by Piedmont, the Commission issued a Second Interim Authority Order on April 20, 2020, and a Final Interim Authority Order on July 20, 2020, authorizing Piedmont to continue to serve DEC at the Lincoln Plant under the rates and other terms of the Second Revised Agreement, subject to the conditions included in the Commission's First and Second Interim Authority Orders, until further Order of the Commission.

On June 1, 2020, the Public Staff filed its recommendations and proposed order. In summary, the Public Staff stated that it reviewed the Second Revised Agreement and other information provided by Piedmont in response to Public Staff data requests pursuant to the parameters set forth in N.C.G.S. §§ 62-140, 62-142, and 62-153(b). According to the Public Staff, the purpose of the volumetric rate component included in negotiated special and electric generation contracts (special contracts), is to provide recovery of costs related to existing local distribution company (LDC) infrastructure and operations and to prevent subsidization of the contract customer by the LDC's other customers. The Public Staff further stated that special contracts may be structured with (a) a demand charge that recovers the plant investment required to serve the customer, (b) margin and fixed gas components, (c) other negotiated volumetric components that provide system contributions, or (d) other contributions that result in a benefit to the system. Moreover, the Public Staff stated that the volumetric rate component should be comparable with the type of volumetric contribution paid by both interruptible and firm tariffed transportation customers on the LDC's system. The Public Staff's comments were later incorporated by reference into the Public Staff's testimony, as discussed below.

On June 26, 2020, Piedmont and DEC filed comments on the Public Staff's recommendations and proposed order. DEC contended that the Second Revised Agreement would provide Piedmont with the appropriate reimbursement and revenue requirement for redelivery services to the New Facilities and is in the best interest of DEC's electric customers. Further, DEC contended that the Public Staff's recommendations would result in DEC's customers unfairly subsidizing Piedmont's customers.

In its comments Piedmont contended that the Public Staff's proposal is unsupported by coherent ratemaking methodology and would result in DEC paying multiples more for system support over the life of the Second Revised Agreement than is actually required to fully compensate Piedmont for the cost of the service DEC will receive. Further, Piedmont claimed that the Public Staff's proposal would compensate Piedmont for "system support" in circumstances where Piedmont's system does not

support service to DEC. Piedmont requested that the Commission approve the Second Revised Agreement. Piedmont requested that if the Commission is dissatisfied by Piedmont's approach to system support charges that the Commission initiate a separate proceeding to examine the propriety and calculation of system support usage-based surcharges in natural gas redelivery special contracts as a means of establishing how and in what manner such surcharges should be utilized, and how they can be calculated on a nondiscriminatory and nonarbitrary basis in the future.

On March 16, 2021, in Docket Nos. G-9, Subs 781 and 722, the Commission issued an Order consolidating Piedmont's request for Commission approval of its Second Revised Agreement with Piedmont's general rate case application, requiring Piedmont and the Public Staff to file testimony about the Second Revised Agreement, and allowing DEC to file testimony (Consolidation Order).

### **Standard of Review**

Under the North Carolina Public Utilities Act (Act), the Commission is required to set just and reasonable rates for public utilities. N.C.G.S. § 62-130(a). Just and reasonable rates are those that provide the utility an opportunity to earn a fair return on its property and are fair to the utility's customers. *State ex rel. Utils. Comm'n. v. Piedmont Natural Gas Co.*, 254 N.C. 536, 119 S.E.2d 469 (1961); *State ex rel. Utils. Comm'n. v. Duke Power Co.*, 285 N.C. 377, 206 S.E.2d 269 (1974). A utility "rate" includes the method by which the amount to be paid by a customer is computed. *Edmisten I*, 291 N.C. at 340.

The North Carolina Supreme Court has stated:

[I]n sum, the fixing of "reasonable and just" rates involves a balancing of shareholder and consumer interests. The Commission must therefore set rates which will protect both the right of the public utility to earn a fair rate of return for its shareholders and ensure its financial integrity, while also protecting the right of the utility's intrastate customers to pay a retail rate which reasonably and fairly reflects the cost of service rendered on their behalf.

*State ex rel. Utils. Comm'n. v. Nantahala Power & Light Co. (Nantahala)*, 313 N.C. 614, 691, 332 S.E.2d 397, 474 (1985); *rev'd on other grounds*, 476 U.S. 953, 106 S. Ct. 2349, 90 L.Ed.2d 943 (1986); *appeal after remand*, 324 N.C. 478, 380 S.E.2d 112 (1989).

The balancing of shareholders' and ratepayers' interests described in *Nantahala* is a part of the Commission's duty to ensure that the utilities' rates and services are consistent with the public interest. N.C.G.S. § 62-2(a). The first basic principle that the Commission follows in striking that balance is to set the utility's revenues in an amount sufficient to cover the utility's cost of service, plus a reasonable return on its rate base. See N.C.G.S. § 62-133. A second basic principle applied by the Commission is that customers or classes of customers should pay the cost incurred by the utility to serve the customer or classes of customers, which is sometimes referred to as the "cost causation"

principle. A corollary to this principle is that the utility's rates should not result in one class of customers subsidizing the cost incurred by the utility to serve a different customer or class.

The Commission's orders must be based on competent, material and substantial evidence. N.C.G.S. § 62-65(a). The burden of proof to show that rates are just and reasonable is on the utility. N.C.G.S. § 62-134(c). Nevertheless, intervenors have a burden of production in the event that they dispute an aspect of the utility's prima facie case. *State ex rel. Utils. Comm'n v. Intervenor Residents of Bent Creek/Mt. Carmel Subdivisions*, 305 N.C. 62, 76, 286 S.E.2d 770, 779 (1982) ("The burden of going forward with evidence of reasonableness and justness arises only when the Commission requires it or affirmative evidence is offered by a party to the proceeding that challenges the reasonableness of expenses..."). If the intervenor meets its burden of production, then the ultimate burden of persuasion reverts to the utility, in accordance with N.C.G.S. § 62-134(c).

Finally, because Piedmont and DEC are both wholly owned subsidiaries of Duke Energy Corporation, they are affiliates within the meaning of N.C.G.S. § 62-153. As a result, DEC cannot pay any compensation to Piedmont under the Second Revised Agreement without the Commission granting its approval of the contract. The statute states, in pertinent part, that

The Commission may disapprove, after hearing, any such contract if it is found to be unjust or unreasonable, and made for the purpose or with the effect of concealing, transferring or dissipating the earnings of the public utility.

N.C.G.S. § 62-153(a).

### **Summary of the Testimony**

Much of the testimony about the Second Revised Agreement includes confidential pricing numbers that are proprietary to Piedmont and DEC. This information was filed under seal and cannot be disclosed in this Order. However, all such confidential information was available for the consideration of the Public Staff in its investigation of the contract and to the Commission in its deliberations.

#### ***Piedmont Witness Barkley – Direct Testimony***

Witness Barkley testifies that the Revised Agreement between Piedmont and DEC served two purposes: (1) it updates the form of the Original Agreement while preserving the rates underlying the service provided under the Original Agreement to the existing 16 CTs at the Lincoln Plant, and (2) it provides for an additional level of gas volumes to the Lincoln Plant as a fuel source for additional CT being installed by DEC. Witness Barkley testifies that Piedmont estimated that the New Facilities at the Lincoln Plant would consist of about 1,000-feet of new transmission main running from the existing Piedmont transmission main to the new Lincoln Plant CT, as well as measuring and regulating

station equipment. He testifies that the New Facilities are not intended for service to any other customer. He states that the Revised Agreement reflected these terms and, in addition to the charges provided for under the Original Agreement with DEC, also included an incremental demand charge to recover the costs of the New Facilities over the term of the Revised Agreement. Tr. vol. 3, 557-59.

Piedmont witness Barkley testifies that Piedmont calculated the new incremental facilities demand charge using its standard cost of service model, and that the model is used in every case where the Piedmont is evaluating the economic feasibility of a system expansion to serve a new large volume customer. He testifies that the model incorporates standard cost inputs, including capital expenditures, operating and maintenance expenses (O&M), property taxes, payroll taxes, income taxes, and interest to arrive at a net present value determination as to whether the expansion of service to a proposed project under Piedmont's tariff rates is economically feasible. He states that if a project is not economically feasible under the revenues that would be produced under Piedmont's tariff rates, i.e., it does not produce a reasonable return on investment, then Piedmont calculates demand rates necessary to produce those revenues. He further states that occasionally, on the opposite end of the spectrum, Piedmont's tariff rates generate revenues and returns that are unacceptably high to customers that have the option to locate elsewhere or to use an alternative fuel. Piedmont then uses its cost of service model to calculate alternative rates that recover Piedmont's costs but are not unacceptably high. Witness Barkley testifies that Piedmont uses this approach consistently with every new proposed large volume customer and does not vary the model or the application of the model for affiliates or any other party, and that this process typically results in a proposed service agreement filed with the Commission for approval as a special contract. He testifies that Piedmont utilized this approach in arriving at the terms of the Revised Agreement and that the model was inclusive of all costs Piedmont anticipated incurring in order to serve DEC. *Id.* at 559-61.

Witness Barkley testifies that because the Public Staff took issue with the Revised Agreement Piedmont went back to DEC and negotiated the Second Revised Agreement wherein the parties added a volumetric rate surcharge to satisfy the Public Staff's concern about contribution by DEC to system support. He states that no specific ratemaking method underlies this volumetric rate, and that there is no standard approach that the Commission has directed Piedmont to use for this purpose. He further testifies that the Public Staff did not offer any input as to how the rate should be set. Instead, the approach was the result of Piedmont's determination of a commercially viable solution that was scalable and repeatable, and that would result in a meaningful contribution above Piedmont's incremental costs, ultimately benefitting Piedmont's other customers. The Second Revised Agreement was filed with the Commission on November 16, 2018. Witness Barkley recounts the history of the Interim Authority Orders issued by the Commission and states that Piedmont has continued to serve the Lincoln Plant under the terms of the Second Revised Agreement pursuant to the Commission's orders. *Id.* at 561-62.

Witness Barkley further testifies that the Public Staff recommended to the Commission that Piedmont be ordered to renegotiate the Second Revised Agreement to

add a higher volumetric rate than that agreed to by Piedmont and DEC in the Revised Agreement for the incremental volumes of gas to be delivered to the new CT. He states that Piedmont explained its opposition to the Public Staff's position in detail in its comments filed on June 26, 2020, and he adopted those comments, which he attached to his testimony as Exhibit \_\_ (BPB-1). In short, he states that Piedmont disagrees with the Public Staff's proposal on multiple grounds but primarily because it is not based on Piedmont's cost of service to DEC or on any other discernible formula or analysis, but that Piedmont does not oppose the idea of a system support surcharge associated with special contract arrangements that actually utilize portions of its preexisting system to effectuate deliveries to a special contract customer. He adds that one very significant aspect of the Lincoln Plant service arrangement is that the facilities used to provide that service are 100% dedicated to serving the DEC Lincoln Plant, and do not serve any other customer. He states that Piedmont does not rely on any other part of its transmission or distribution system to serve DEC at the Lincoln Plant. *Id.* at 563-65.

Witness Barkley notes that the volumetric surcharge agreed to by Piedmont and DEC in the Second Revised Agreement was based on a fixed revenue and cost analysis. He testifies that costs based on fixed revenues are appropriate because Piedmont's costs for the New Facilities are substantively fixed costs, and that for this reason the Public Staff's proposed volumetric rate is not appropriate. *Id.* at 565-66.

In his Exhibit\_ (BPB-2), witness Barkley presents information that Piedmont asserted shows the benefits of the Second Revised Agreement, and he summarizes the benefits in Table 1 included in his testimony. He states that the exhibit demonstrates a return on equity (ROE) that would not be appropriate in comparison to Piedmont's currently approved ROE of 9.70%. According to witness Barkley, appropriate utility returns benefit all ratepayers in general rate case proceedings over the life of the special contract. He states that the base case shown on page one of Exhibit\_ (BPB-2), includes revenues without the volumetric surcharge agreed upon in the Second Revised Agreement, that the volumetric surcharge is included on page two, and that the impacts of the Public Staff's recommended volumetric charge are shown on page three. He states that Piedmont does not believe the returns shown on page three would be commercially viable. Witness Barkley opines that the result would have been that DEC would have decided not to construct the New Facilities, to locate them elsewhere, or to bring a complaint against Piedmont before the Commission, and that if the project was not completed within Piedmont's service territory its customers would have been denied the benefits associated with the project. *Id.* at 566-70.

With regard to the Public Staff's contention that its recommended volumetric rate is based on similar volumetric rates for system support in other electric generation contracts with North Carolina local distribution companies (LDCs), as well as special contract arrangements in some other circumstances, witness Barkley testifies that because most of the contracts discussed by the Public Staff are with other LDCs, the commercial details were redacted by the Public Staff. Thus, Piedmont is unable to determine the merits of the volumetric charge included in those contracts, or the underlying rate design philosophy upon which those contracts were based. As a result,

he states that Piedmont cannot determine if the variable charges were appropriate or to what degree, if any, the variable charges under those contracts provide system support. *Id.* at 568-70.

Finally, Piedmont witness Barkley testifies that although there was no subsidy in the Revised Agreement, Piedmont and DEC subsequently executed the Second Revised Agreement with a volumetric surcharge in an effort to seek a compromise with the Public Staff and avoid protracted litigation, thus allowing the approval process by the Commission to move forward in an efficient manner. *Id.* at 577.

### ***Piedmont Witness Sosnick***

Piedmont witness Sosnick testifies that he reviewed the Second Revised Agreement and Piedmont's cost of service model, and concludes that the costs to own and operate incremental facilities were nearly all fixed, aside from a small O&M expense that was projected to rise steadily at 2% per year. He states that the fixed fee in the Second Revised Agreement essentially recovers a set sum through a set charge and that the Public Staff's recommendation of adding a volumetric charge to this fixed charge would instead recover a set sum through a variable fee. He testifies that the Second Revised Agreement comports with industry best practices in regard to rate design, cost causation, and recovery. Tr. vol. 3, 546-47.

Witness Sosnick further testifies that although the proposed volumetric fee introduced to prevent cross subsidization between customers is not needed because the incremental facilities are not interconnected to the overall Piedmont system, and, therefore, do not cause wear and tear to this system, the Second Revised Agreement, as filed with its volumetric rate being lower than the Public Staff's, still meets the Public Staff's wishes, does not inflate DEC's rates invidiously, and provides benefits to Piedmont's overall customer base through lower rates. He recommends that the Commission accept the Second Revised Agreement without modification. *Id.* at 547-48.

### ***DEC Witness Mitchell***

Witness Mitchell testifies that most of the LDC redelivery agreements contracted by DEC and DEP since the Lincoln Plant Original Agreement in 2004 included fixed demand rates in lieu of variable or volumetric charges. He states that variable charges historically have been primarily designed to account for certain administrative and general expenses (A&G) and operations and maintenance (O&M) costs for the facilities and, for example, volumetric charges are often used to offset variable O&M costs of compression facilities. Witness Mitchell testifies, however, that the Piedmont facilities at the Lincoln Plant do not include any compression facilities. He further testifies that volumetric charges were more logical in previous agreements with different ratemaking constructs, or for facilities that have had their costs fully recovered by the LDC. He gave as an example DEC's original 1994 Lincoln Plant contract that was a bundled agreement with Piedmont that included both transportation services and the gas commodity, in which there was a volumetric charge within the commodity pricing. According to witness Mitchell, this



agreement recovered the costs of the Existing Facilities at the Lincoln Plant over the initial 10-year period. Tr. vol. 4, 15-18.

Witness Mitchell testifies that in the 2004 Original Agreement the commodity portion was removed, but that despite the cost of the Original Facilities having been fully recovered, and to likely help cover system overhead and O&M, a volumetric charge was retained. However, in the Revised Agreement the A&G and O&M for the New Facilities are accounted for as part of the monthly fixed demand charge. In response to the Public Staff's concerns, however, in the Second Revised Agreement DEC and Piedmont negotiated a volumetric charge with a cap. *Id.* at 18-21.

Finally, he testifies that the Public Staff's proposed volumetric charge is unreasonable and, if adopted by the Commission, would inappropriately result in cross-subsidization of Piedmont by DEC's customers. *Id.* at 21.

### ***Public Staff Witness Perry***

Witness Perry adopts the Public Staff's June 2021 recommendations and proposed order, and attached those documents as her Exhibits II, IV and VI. She also attaches Exhibits VII and VIII containing the Public Staff's responses to the Commission's Questions in the Consolidation Order.

In its recommendations and proposed order, the Public Staff states that it reviewed the Second Revised Agreement and other information provided by Piedmont in response to Public Staff data requests pursuant to the parameters set forth in N.C.G.S. §§ 62-140, 62-142, and 62-153(b). The Public Staff states that the purpose of the volumetric rate component included in special and electric generation contracts is to provide recovery of costs related to existing LDC infrastructure and operations and to prevent subsidization of the contract customer by the LDC's other customers. According to the Public Staff, special contracts are typically negotiated, and may be structured with (a) a demand charge that recovers the plant investment required to serve the customer, (b) margin and fixed gas components, (c) other negotiated volumetric components that provide system contributions, or (d) other contributions resulting from the contract terms that result in a benefit to the system. The Public Staff opines that the volumetric rate should be comparable with the type of volumetric contribution paid by both interruptible and firm tariffed transportation customers on the LDC's system.

According to the Public Staff, in the current instance the infrastructure costs to serve the Existing Facilities at the Lincoln Plant (Units 1-16) have been fully recovered through a demand charge imposed under the Original Agreement. The Public Staff states that the Second Revised Agreement filed by Piedmont added a usage-based system support surcharge that was negotiated with DEC to address the Public Staff's concerns related to system contributions by the New Facilities. However, the Public Staff maintains that because the system support surcharge is capped it will not provide a reasonable level of system contribution. The Public Staff further states that in its research it found that previously negotiated CT electric generation agreements usually include an uncapped

volumetric rate component higher than that included by Piedmont and DEC in the Second Revised Agreement, and it provided a range of such charges. If Piedmont is permitted to cap its system support charge regardless of the volumes delivered, the Public Staff believes that electric generators on the Piedmont system are getting a better arrangement than they are getting on other LDC systems in the state. As a result, the Public Staff recommends that Piedmont renegotiate with DEC for a higher and uncapped volumetric surcharge, and that its recommended volumetric rate is reasonable and is comparable to the volumetric pricing of other electric generators outside of Piedmont's service territory. Finally, the Public Staff recommends that if Piedmont does not renegotiate with DEC, then the Commission should impute the Public Staff's recommended volumetric rate for the New Facilities in Piedmont's general rate case when determining end of period and proposed revenues.

In Perry Exhibit VIII, the Public Staff provides its response to Commission Question 1b. in the Consolidation Order about the purported subsidization that would result without a volumetric rate.

In response to cross-examination questions and Commission questions regarding whether the Public Staff's proposed volumetric rate is arbitrary, Public Staff witness Perry testifies that her recommendation is not arbitrary because she is using the same methodology used by other utilities when calculating a similar contract rate that has been approved by the Commission. She states that this methodology utilizes Piedmont's filed cost of service studies inputs and historical volumetric charges reflected in all of the LDC's CT agreements approved by the Commission. Tr. vol. 4, 461. Witness Perry further notes that the capped volumetric surcharge included by Piedmont and DEC in the Second Revised Agreement has not been identified as a filed cost of service line item and the Public Staff does not know where it came from. *Id.* at 435. In addition, witness Perry testifies that transparency is important, and the Public Staff could not recommend approval of a contract with a high ROE in order to allow a fixed contract rate. In addition, she testifies that the volumetric approach made more sense due to the fluctuations in the volumes over the years with generating plants to ensure that the customer is paying for the use of the LDC's system and associated system costs as volumes ramp up or down over the contract term. *Id.* at 459-60.

Upon further questions by the Commission regarding how the Public Staff determined its volumetric charge, Public Staff witness Perry references a data request response, which the Public Staff subsequently filed as its Confidential Late Filed Exhibit No. 2 on September 28, 2021. According to witness Perry, the data request response shows the underlying computations using Piedmont's filed cost of service amounts and volumes associated with firm transportation Rate Schedule 113, the range of volumetric rates that the Public Staff analyzed in order to make its final recommendation to the Commission, and all other volumetric rates charged by other LDCs in the state that have been approved by the Commission. *Id.* at 459-60.

In response to cross-examination questions by Piedmont, witness Perry agrees that Piedmont used its standard cost model in analyzing the economic feasibility of

providing the New Facilities at the DEC Lincoln plant. She further agrees that Piedmont uses the results of its model to calculate a fixed demand charge that goes into its proposed special contracts, and that this is typically the incremental capital and O&M applicable to the project. *Id.* at 418-19. However, she contends that the earnings calculated by Piedmont under the Second Revised Agreement are not accurate because the total costs that should be assigned to the contract are not included in the earnings computations. Witness Perry further describes the categories of certain costs that need to be included in the calculation. *Id.* at 443-44.

When asked to quantify the amount of the missing support system costs that the Public Staff contends are not being paid by DEC under the Second Revised Agreement, witness Perry testifies that she could not provide a number. Rather, she states that the Public Staff used an approach that was used for other utilities in North Carolina and approved by the Commission. According to witness Perry, the Public Staff applied this approach to Piedmont to come up with a range of system cost volumetric charges. She states that the Public Staff used the lower end of the range for Piedmont's costs based on Piedmont's 2019 cost of service study and the volumes that Piedmont stated in its 2019 rate case to come up with a proxy of the kinds of costs assigned under Piedmont's Rate 113. Witness Perry was asked a clarifying question by the Commission about how the Public Staff developed its proxy for the support system costs.

Q. Is your testimony your proxy comes from looking at all these other contracts; is that right?

A. My proxy comes from what they have done in the past with their CTs as well, but also -- I mean, it -- DEC knows exactly what they're paying all their different utilities, I will tell you that one thing, but anyway -- yeah.

*Id.* at 457.

In response to a request by the Commission during the hearing, on September 28, 2021, the Public Staff filed Confidential Late-Filed Exhibit No. 2. This exhibit includes witness Perry's computations by which she derived the range of O&M costs per dt under different scenarios of the Second Revised Agreement. The range included O&M costs based on Piedmont's Large General Service (LGS) interruptible, LGS Rate 113 firm, and LGS Rate 114 interruptible schedules.

### ***Piedmont Witness Barkley - Rebuttal Testimony***

In response to the Public Staff's answer to Commission Question 1b. about the purported subsidization that would result without a volumetric rate (Perry Exhibit VIII), witness Barkley states that the Public Staff's response does not reflect the realities of providing natural gas transportation service to a special contract customer. He states that under the Public Staff's scenarios Piedmont's investment to serve the Lincoln Plant's New Facilities would be repaid by DEC threefold every year during the life of the contract, which would be a huge subsidy being paid by DEC, not a subsidy received by DEC. He

further testifies that DEC would not have agreed to such a pricing option and would have located this incremental investment elsewhere. He states that Piedmont's Revised Agreement with DEC included rates that recovered all the incremental costs of the New Facilities and, therefore, no subsidy existed. He opines that in its subsidy scenarios the Public Staff simply subtracted three different data points from the amount that would have been billed under Piedmont's Rate Schedule 113, Large General Transportation Service. Tr. vol. 3, 576-77.

## **Discussion**

The Commission is tasked with weighing the evidence presented by Piedmont, DEC and the Public Staff and decide whether there is substantial evidence that the rates proposed by Piedmont and DEC in the Second Revised Agreement will recover Piedmont's full cost of service to DEC, and are otherwise just and reasonable.

Piedmont contends that there is no justification for a system support charge for its service to the new CT, and that Piedmont and DEC added the incremental system support charge to the Second Revised Agreement simply to avoid protracted litigation with the Public Staff. In essence, Piedmont maintains that the New Facilities are not a part of Piedmont's system, and consequently should not be subject to a system support charge, because the 1,000 feet of new pipeline connects directly from Transco's interstate pipeline to the new CT, and transports no gas used by any customer other than DEC. The Commission does not agree with Piedmont on this point. Without the administrative, accounting, billing and other support functions that are an integral part of Piedmont's system, the New Facilities could not be built, operated, and maintained. Therefore, the rates charged by Piedmont for gas service by the New Facilities should include a volumetric rate for system support.

On the other hand, the Commission is not persuaded that the volumetric rate for the gas volumes delivered by Piedmont to the original 16 CTs and those volumes delivered to the new CT should be the same, as the Public Staff maintains. There is a point where the volumetric rate in a special contract covers all system costs that are attributable to the contract. The Public Staff has not previously and does not now contend that the volumetric rate in the Original Agreement does not fully cover Piedmont's system support costs for delivering gas to the original 16 CTs. Thus, the question is whether the volumetric rate applicable to the new CT covers the incremental system support costs attributable to the new CT.

The Commission appreciates the Public Staff's testimony about the volumetric rate structure of other special contracts. However, all special contracts, having been negotiated by the utility and customer to provide service to one customer, are inherently different. In a sense, the special contract customer is a separate "customer class," with specific circumstances and needs that are not readily comparable to the circumstances and needs of other customers. Indeed, the need to address these differences is the main rationale for allowing the utility and the customer to negotiate a special contract. As a result, comparisons with other special contracts, although of interest and somewhat

instructive, are not controlling. Rather, each special contract must be evaluated on the customer's particular circumstances and needs, and the utility's cost of serving the customer. Nonetheless, the same basic ratemaking principles, including cost causation, apply to the negotiated rates in a special contract.

The present case is an excellent example of the necessity for a case-by-case analysis of special contracts and their rates. Here Piedmont and DEC were not negotiating a wholly new contract to address a totally new situation. Instead, Piedmont and DEC were negotiating an extension of the terms of the Original Agreement under which Piedmont constructed and operates the Original Facilities that serve the first 16 CTs built at the Lincoln Plant, plus the inclusion of new terms to enable Piedmont to recover the additional cost of the New Facilities to serve DEC's addition of a new CT at the plant. The Original Agreement included a volumetric rate component for a contribution by DEC to support Piedmont's overall system support costs, such as administrative, accounting, billing, other general costs, and operation and maintenance (collectively, O&M). The Second Amended Agreement includes two different volumetric rates for a contribution by DEC to support Piedmont's O&M: (1) the same uncapped volumetric rate applicable to the volumes of gas delivered by Piedmont to the original 16 CTs via the Original Facilities, and (2) a capped volumetric rate applicable to the volumes of gas delivered by Piedmont to the new CT via the New Facilities.

The Public Staff contends that the volumetric rate should be the same for the gas volumes delivered by Piedmont to the original 16 CTs and those volumes delivered to the new CT, and should not be capped for the New Facilities. The Commission does not agree with this one-size-fits-all approach. It is not logical that the incremental O&M cost to serve one new CT at the Lincoln Plant requires the same rate adder as that approved to recover Piedmont's O&M cost for service to the original 16 CTs at the plant. Instead, the incremental rate adder should be structured to recover Piedmont's incremental O&M. As an example, if a homeowner with a security system added a room to his home the system provider might add an additional charge for the cost of the additional camera in the new room, but most likely would not add an additional O&M fee. Even if the security system provider added an additional O&M fee, it would not be in the same amount as the original component of the monthly charge for O&M.

The Commission gives substantial weight to the testimony of Piedmont witness Barkley about Piedmont's cost of service study. The Public Staff did not present substantial evidence that challenges or contradicts Piedmont's cost of service study. Indeed, witness Perry agrees that Piedmont used its standard cost model in analyzing the economic feasibility of providing the New Facilities at the DEC Lincoln plant, that Piedmont uses the results of its model to calculate a fixed demand charge that goes into its proposed special contracts, and that this is typically the incremental capital and O&M applicable to the project. *Id.* at 418-19.

In addition, the Public Staff did not present substantial evidence to quantify the system support amount that it contends should be included in the cost of Piedmont's incremental service to DEC via the New Facilities. Rather, it simply maintained that DEC

will not be paying its fair share of system support without the higher volumetric rate proposed by the Public Staff, and that consequently other ratepayers will be subsidizing Piedmont's services to DEC. The Commission is not persuaded by the Public Staff's evidence on this point. In essence, the Public Staff recommended that the Commission require that the Second Revised Agreement include an increased volumetric rate because there are some unquantified system support costs that the proposed volumetric rate does not recover from DEC. Public Staff witness Perry testified that the Public Staff used the volumetric rates in other LDC special contracts as a proxy for its recommended volumetric rate in the present contract. As discussed above, each special contract customer has specific circumstances and needs that are not readily comparable to the circumstances and needs of other special contract customers. Piedmont testified that the capped volumetric charge negotiated with DEC for incremental system support attributable to the New Facilities is more than adequate based on Piedmont's cost of service model. The Public Staff did not provide a reasonable cost of service rationale for its position that the same uncapped volumetric rate that applies to the Existing Facilities serving 16 CTs should be applied to the New Facilities serving only one CT. The Commission cannot make its decisions based on a proxy cost of service that is derived from a range of such costs.

The Commission also gives substantial weight to the testimony of Piedmont witness Barkley about the potential overearnings by Piedmont if the Second Revised Agreement included the volumetric rate proposed by the Public Staff. The Public Staff's concern is that Piedmont would not recover its full cost of service to DEC under the Second Revised Agreement and would, instead recover those unrecovered costs from Piedmont's ratepayers, a classic rate subsidization situation. But Piedmont's calculation of the returns that Piedmont would receive under the DEC contract if the contract was modified to include the Public Staff's recommended volumetric rate show that the opposite would be true – DEC would be paying more than Piedmont's cost of service to DEC under the Second Revised Agreement and, therefore, would need to recover those excess costs from DEC's ratepayers, resulting in DEC's ratepayers subsidizing Piedmont's ratepayers. The Public Staff questioned Piedmont's earnings calculations on the basis that they do not reflect an appropriate system support charge. Again, the Public Staff provided no quantification of the system support amount that it contends should be included in the cost of Piedmont's service to DEC.

### **Conclusion**

Based on the evidence and the record, the Commission concludes that Piedmont and DEC presented prima facie evidence that the Second Revised Agreement includes rates that are designed to and will compensate Piedmont for its full cost of service to DEC at the Lincoln Plant, and that the Public Staff did not come forward with sufficient evidence that shows otherwise.

In addition, the Commission concludes that the rates established in the Second Revised Agreement are just and reasonable in compliance with N.C.G.S. § 62-130(a), that the Second Revised Agreement was not made for the purpose of concealing, transferring,

or dissipating the earnings of Piedmont or DEC, that it will not have such an effect, and that it meets the requirements for approval under N.C.G.S. § 62-153. As a result, the Commission concludes that the Second Revised Agreement should be approved.

Public Staff witness Perry testified that it is not reasonably possible to track every cost in every negotiated contract, or to hit the rate exactly. Tr. vol. 4, 461-62. The Commission agrees with this statement. Further, because the Commission is accepting Piedmont's and DEC's position that they have set a rate that adequately recovers Piedmont's cost of service under the Second Revised Agreement, the Commission concludes that the contract should be approved.

Finally, the Commission acknowledges Piedmont's recommendation that the Commission initiate a proceeding to study the issue of system support charges in natural gas special contracts, and the Commission will take Piedmont's recommendation under advisement.

IT IS, THEREFORE, ORDERED as follows:

1. That the Stipulation is hereby approved in its entirety;
2. That Piedmont is hereby authorized to adjust its rates and charges in accordance with the Stipulation and this Order (as such rates may be further adjusted for any changes in the Benchmark or other rate component which may be adjusted pursuant to the procedures for rate adjustments under N.C.G.S. § 62-33.4 prior to the effective date of the revised rates) effective for service rendered on and after November 1, 2021;
3. That an extension of Piedmont's IMR mechanism, in the proposed form of IMR reflected in Exhibits F and H to the Stipulation, is hereby authorized from the date hereof for a period of four years or until Piedmont makes its next general rate case filing, whichever is later, at which time Piedmont may seek further extension of the mechanism through a request to the Commission seeking such relief;
4. That Piedmont is authorized to implement the changes to its Rate Schedules and Service Regulations reflected in Exhibits G and H to the Stipulation;
5. That Piedmont shall file clean versions of the revised Rate Schedules and Service regulations to comply with this order within five days from the date of this Order;
6. That Piedmont is authorized to continue to utilize the depreciation rates and book reserve reallocations as agreed to in the Sub 743 Stipulation and approved by the Commission;
7. That Piedmont is authorized to continue deferral accounting treatment for PIM-T, PIM-D, and environmental remediation O&M expenses as set forth in the Stipulation effective November 1, 2021;

8. That Piedmont is authorized to implement the amortizations, accounting practices, principles, methods, reporting requirements, and other actions agreed to in the Stipulation;

9. That prior to the earlier of Piedmont's next general rate case or its 2023 Annual Review, that Piedmont study the allocation of its LNG plant assets between North Carolina and South Carolina for the purpose of determining whether its current method is fair to each state's customers in light of the fact that Piedmont plans for future supply and capacity resources based on demand created by Piedmont's North Carolina and South Carolina service territories;

10. That if Piedmont receives revenue for any deferred cost for a longer period of time than the amortization period approved by the Commission for that deferred cost, it shall continue to record all revenue received for that deferred cost in the specific regulatory asset/liability account established for that deferred cost until its next general rate case;

11. That the revised Consolidated Natural Gas Construction and Redelivery Services Agreement (Second Revised Agreement) between Piedmont and DEC filed by Piedmont on November 16, 2018, in Docket No. G-9, Sub 722 shall be, and is hereby, approved;

12. That Piedmont shall not recover from Piedmont's ratepayers other than DEC any costs of service to DEC incurred from the date of the First Interim Authority Order forward as a result of the implementation and operation of the Second Revised Agreement; and

13. That Piedmont shall send the notice attached hereto as Appendix A to its customers beginning with the billing cycle that includes the rate changes approved herein.

ISSUED BY ORDER OF THE COMMISSION

This the 6th day of January, 2022.

NORTH CAROLINA UTILITIES COMMISSION



Erica N. Green, Deputy Clerk

Commissioner Daniel G. Clodfelter dissents in part.  
Commissioner Jeffrey A. Hughes concurs in part.



## DOCKET NO. G-9, SUB 722

### Commissioner Daniel G. Clodfelter, dissenting:

I dissent as to the Commission's decision in Docket Number G-9, Sub 722. It is clear from the testimony that neither Piedmont nor DEC believe that a volumetric support charge is appropriate to include in the Second Revised Agreement governing gas supply service for DEC's new combustion turbine at its Lincoln County site. The new combustion turbine is served by a 1,000-foot-long pipeline connecting directly to Transco's main pipeline. That line will not connect to any other portion of Piedmont's system and will serve no other customer than DEC. It will not impact in any way Piedmont's service to any other part of its system or any other of its customers, and the volumes of gas transported from the Transco pipeline to the DEC Lincoln County unit will not affect operations anywhere else on Piedmont's system. Piedmont witness Barkley testified that Piedmont calculated a demand charge to cover the fixed costs that Piedmont will incur in connection with the connector pipeline using Piedmont's standard methodology for determining such costs, and this demand charge was included in the original agreement negotiated with DEC. However, at the Public Staff's insistence, and for no other reason, Piedmont and DEC also agreed to include a volumetric surcharge in the Second Revised Agreement, hoping that by doing so they could secure the Public Staff's consent to the arrangement. The Public Staff's position is apparently based on the fact that volumetric system support charges are included in other negotiated special contracts, but this "cookie cutter" approach takes no account of the differences between such other contracts and the particular facts relative to the pipeline that will supply the Lincoln County combustion turbine. Supporting evidence for this judgment is the fact that neither the Public Staff nor Piedmont could explain to the Commission how the appropriate level of a volumetric surcharge should be established for the Second Revised Agreement. The final formula used for purposes of the settlement between the Public Staff and Piedmont has no discernible foundation in the record.

It is true that the capped volumetric charge finally settled upon for inclusion in the Second Revised Agreement is a relatively small amount of money, and it is understandable that Piedmont and DEC might think that such a small sum is worthwhile if it satisfies the Public Staff. In the end, however, the capped charge did not satisfy the Public Staff, so the parties' effort was for naught. Even so, I would find that on the factual record as it now stands there is no support for any amount of a volumetric payment by DEC to Piedmont in connection with the supply pipeline for the new Lincoln County combustion turbine. I would find instead that the volumetric payment has the effect, even if not the purpose, of an improper transfer or subsidy from DEC to Piedmont. This is not permitted under N.C.G.S. § 62-153(a), and I would so hold. I would instead approve the Revised Agreement initially filed by Piedmont which did not include a volumetric surcharge.

**DOCKET NO. G-9, SUB 722**

**Commissioner Jeffrey A. Hughes, concurring:**

While I concur with the majority's decision to approve the Second Revised Agreement between Piedmont and DEC, I do not agree with the statement that the rates included as part of the Second Revised Agreement are as the order states, "*designed to and will compensate Piedmont for its full cost of service to DEC at the Lincoln Plant.*" After examining the evidence, my conclusion is that the agreement includes rates that will not cause harm to existing customers and will cover a reasonable amount of the short-term incremental costs associated with this project. This lesser conclusion (compared to the order language) was sufficient for me to be willing to approve the Second Revised Agreement.

I appreciate the rationale for focusing on the incremental costs associated with new or expanded service to determine whether it will harm existing customers through excessive subsidization. On the other hand, I do not believe an incremental cost analysis for a new or expanded service can or should be relied on as a method to confidently determine "full cost" rates. I believe looking at customers from an incremental perspective has an inherent weakness and that many new utility customers could make the case that the incremental costs of serving them are lower than the rates they are required to pay, and which existing customers pay. Assigning and allocating costs as part of a full cost of service study requires making numerous assumptions that often are the subject of debate and discussion that I think were beyond the scope of the analysis carried out for the Second Revised Agreement. I recognize it is not feasible to carry out a full cost of service study for each special agreement and am satisfied with the level of analysis presented by Piedmont supporting this agreement but at the same time do not want to exaggerate the accuracy or definitiveness of the analysis that was carried out.

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. G-9, SUB 722  
DOCKET NO. G-9, SUB 781  
DOCKET NO. G-9, SUB 786

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. G-9, SUB 722	)	
	)	
In the Matter of	)	
Consolidated Natural Gas Construction and	)	
Redelivery Services Agreement Between	)	
Piedmont Natural Gas Company, Inc., and	)	
Duke Energy Carolinas, LLC	)	
	)	
DOCKET NO. G-9, SUB 781	)	
	)	
In the Matter of	)	
Application of Piedmont Natural Gas	)	
Company, Inc., for an Adjustment of Rates,	)	PUBLIC NOTICE
Charges, and Tariffs Applicable to Service	)	
in North Carolina	)	
	)	
DOCKET NO. G-9, SUB 786	)	
	)	
In the Matter of	)	
Application of Piedmont Natural Gas	)	
Company, Inc., for Modification to Existing	)	
Energy Efficiency Program and Approval	)	
of New Energy Efficiency Programs	)	

On January 6, 2022, the North Carolina Utilities Commission (Commission) issued an Order allowing Piedmont Natural Gas Company, Inc. (Piedmont or the Company), to increase its rates and charges by approximately \$74.2 million annually, or 6.7% overall, effective November 1, 2021.

On March 22, 2021, Piedmont Natural Gas Company, Inc. (Piedmont or the Company), filed an application with the Commission in Docket No. G-9, Sub 781 requesting authority to adjust and increase its rates and charges for natural gas service in North Carolina. On April 13, 2021, the Commission issued an Order Establishing General Rate Case and Suspending Rates.

Also on April 13, 2021, the Public Staff – North Carolina Utilities Commission (Public Staff) filed a Motion to Consolidate Dockets requesting that the Commission issue an order consolidating the previously consolidated Docket Nos. G-9, Sub 722, Piedmont's redelivery services agreement for Duke Energy Carolinas, LLC's Lincoln Plant, and G-9, Sub 781 with Docket No. G-9, Sub 786, in which Piedmont filed a request for approval of modifications to its existing Equipment Rebate Program and of three new energy efficiency programs: Residential New Construction Program, Commercial Food Services Program, and Commercial HVAC & Water Heating Program. On April 19, 2021, the Commission issued an order granting the Public Staff's motion and consolidating the above-referenced dockets (collectively, the Application).

In the Application, Piedmont requests authority to increase its rates and charges to produce additional overall annual North Carolina retail revenues of approximately \$109 million, an increase of approximately 10.4% over current revenues. Further, Piedmont seeks approval of a rate of return on common equity of 10.25%.

Piedmont also seeks (i) a general increase in and revisions to the rates and charges for customers served by the Company; (ii) continuation of Piedmont's Integrity Management Rider (IMR) mechanism contained in Appendix E to its approved service regulations; (iii) continued regulatory asset treatment for certain incremental Transmission Integrity Management Program (TIMP) and Distribution Integrity Management Program (DIMP) Operations and Maintenance (O&M) expenses, and certain incremental environmental cleanup and remediation O&M expenses; (iv) continued utilization of the depreciation rates for the Company's North Carolina and joint property assets approved in Docket No. G-9, Sub 743 (Sub 743), the Company's most recent general rate case; (v) revised and updated amortizations and recovery of certain regulatory assets accrued since the Sub 743 proceeding; (vi) utilization of the lead-lag study filed by Piedmont in its Sub 743 filing; (vii) adoption of a Rider mechanism to allow Piedmont to recover the costs of its approved energy efficiency programs from customers or, in the alternative, authorization to defer costs associated with Piedmont's approved energy efficiency programs pending amortization at the Commission's discretion at some later date; and (viii) other updates and revisions to Piedmont's rate schedules and service regulations.

On April 13, 2021, the Commission issued an order suspending the Company's proposed rate changes for a period of up to 270 days from the proposed effective date of April 21, 2021, and setting the Application for a general rate increase for hearing.

The increase approved by the Commission was the result of a stipulation entered into between the Company and other parties to the proceeding, including the Public Staff (Stipulation). The Commission notes that the increases to specific classes of customers will vary in order that each customer class pays its fair share of the cost of providing natural gas service. For the typical residential customer, the approved rate increase effective November 1, 2021, will result in an annual increase to the customer's bill of approximately \$65, or \$5.50 per month. These approved increases are associated with allowed expenses and return on investment and do not contemplate increases or

decreases that may occur in association with gas cost adjustments to rates or other Commission approved riders as allowed by North Carolina law.

A list of approved rates can be obtained from the Company's website, [www.piedmontng.com](http://www.piedmontng.com), or on the Commission's website at <https://www.ncuc.net/> where the Commission's Order, the Stipulation, and other filings in this docket back be viewed/printed from using the Dockets drop down list and entering "G-9 Sub 781" in the Docket Search function.

ISSUED BY ORDER OF THE COMMISSION

This the 6th day of January, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Erica N. Green". The signature is written in a cursive style with a large, stylized initial "E".

Erica N. Green, Deputy Clerk